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IN THE

Supreme Court of the United States

OCTOBER TERM, 1907.

No. 569.

REUBEN QUICK BEAR, RALPH EAGLE FEATHER, and CHARLES TACKETT, on behalf of themselves and all other members of the Sioux Tribe of Indians of the Rosebud Agency, S. D., Appellants,

vs.

FRANCIS E. LEUPP, Commissioner of Indian Affairs; JAMES RUDOLPH GARFIELD, Secretary of the Interior; GEORGE BRUCE CORTELYOU, Secretary of the Treasury; CHARLES H. TREAT, Treasurer of the United States, and ROBERT J. TRACEWELL, Comptroller of the Treasury.

APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

APPELLANTS' BRIEF.

CHARLES C. BURLEY,
Solicitor for Appellants.

N. DUBOIS MILLER,
HAMPTON L. CARSON,
Of Counsel.

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STATEMENT OF THE CASE.

This is an appeal from a decree of the Court of Appeals of the District of Columbia affirming in part and reversing in part a decree of the Supreme Court of the District of Columbia, in equity, on an injunction bill filed by three members of the

Sioux tribe of Indians of the Rosebud Reservation, South Dakota, against the Commissioner of Indian Affairs and other officers of the Government, to prevent the use of Indian treaty and trust funds in payment under a contract for the education of Indian pupils in a sectarian school. The decree of the Court of Appeals affirmed that of the lower court in so far as it denied an injunction respecting the income of the "Trust Fund," but reversed that decree in so far as it enjoined the payment from the "Treaty Fund," and it directed the bill to be dismissed at the cost of the complainants, who are the present appellants.

The facts are as follows:—

By the treaty of peace of April 29, 1868, art. 7 (15 Stats., 635), between the United States and the different tribes of Sioux Indians, a certain tract of country was set apart for the Sioux Indians, and they relinquished all claims to land outside the limits of that tract. In the same treaty the United States agreed to do various things, and to provide, for twenty years, for every thirty children of the Sioux tribe, a teacher competent to teach the elementary branches of an English education, to reside among the Indians. By the act of February 28, 1877, chap. 72 (19 Stats. 254–5), the United States further agreed to furnish to the said Indians "schools and instruction in mechanical and agricultural arts as provided by the treaty of 1868." By the act of March 2, 1889, chap. 405, sec. 17 (25 Stats. 894), article 7 of the treaty of 1868 was continued in force for twenty years longer "subject to such modifications as Congress shall deem most effective to secure said Indians equivalent benefits of such education."

The Indian appropriation act of March 3, 1905, chap. 1479, sec. 1 (33 Stats. 1048, 1055), made the following appropriation for the fiscal year 1906:

> For subsistence of the Sioux, and for purposes of their civilization, as per agreement ratified by Act of Congress approved February twenty-eighth, eighteen hundred and

seventy-seven, seven hundred thousand dollars: PROVIDED, That this sum shall include transportation of supplies from the termination of railroad or steamboat transportation, and in this service Indians shall be employed whenever practicable: AND PROVIDED FURTHER, That the number of rations issued shall not exceed the number of Indians on each reservation, and any excess in the number of rations issued shall be disallowed in the settlement of the agent's account: PROVIDED FURTHER, That the unexpended balance for the fiscal year nineteen hundred and five is hereby appropriated and made available for nineteen hundred and six;

For support and maintenance of day and industrial schools, including erection and repairs of school buildings, in accordance with article seven of the treaty of April twenty-ninth, eighteen hundred and sixty-eight, which article is continued in force for twenty years by section seventeen of the Act of March second, eighteen hundred and eighty-nine, two hundred and twenty-five thousand dollars.

This fund is known as the Sioux treaty fund, and the share of the Rosebud Sioux therein is:

Subsistence and civilization	$168,277.50
Education, Sioux nation	54,098.10
	$222,375.60 (Rec. 32)

By the said act of March 2, 1889, sec. 17 (25 Stats. 858, 895), certain reservations were located within the tract of country which had been set apart for the Sioux in 1868, and the act provided for the relinquishment, by the Sioux, of all land outside these reservations. As a part of this arrangement, it was provided that the sum of $3,000,000 should be deposited in the Treasury to the credit of the Sioux tribe as a permanent fund—

> the interest of which, at five per centum per annum, shall be appropriated, under the direction of the Secretary of the Interior, to the use of the Indians receiving rations and annuities upon the reservations created by this act, in proportion to the numbers that shall so receive rations and annuities at the time that this act takes effect, as follows: one-half of said interest shall be so expended for the promotion of industrial and other suitable education among said Indians, and the other half thereof in such manner and for such purposes, including reasonable cash payments per capita as, in the judgment of said Secretary, shall, from time to time, most contribute to the advancement of said Indians in civilization and self-support.

This fund is known as the Sioux trust fund, and the payment of the interest is regulated by the act of April 1, 1880, chap. 41, sec. 1 (21 Stats. 70), providing as follows:

> And the United States shall pay interest semi-annually from the date of the deposit of any and all such sums in the United States Treasury, at the rate per annum stipulated by treaties or prescribed by law, and such payments shall be made in the usual manner, as each may become due, without further appropriation by Congress.

The share of the Rosebud Sioux in the income of this trust fund, available for education, is $17,245.48 per annum. (Rec. 32.)

Sectarian schools for the Indians have existed since early in the last century, and were from time to time aided by the Government, though without any formal contract. About 1870 the Interior Department began to contract with such schools, the payment being made partly out of money appropriated by Congress for the support of Indian schools and

partly out of Indian treaty funds (*i. e.*, money annually appropriated by Congress in fulfilment of treaties) and the income of Indian funds held in trust by the Government. (Rec. 14.) In 1894 Congress directed the Secretary of the Interior to "investigate the propriety of discontinuing contract schools" and submit his conclusions, with an estimate of the annual cost "of substituting government schools for contract schools." (Act of Aug. 15, 1894, chap. 290; 28 Stats. 311.) The Secretary ultimately suggested that the contract schools "should be decreased at the rate of not less than twenty per cent. a year," so that in a few years they should cease to exist, the Bureau preparing in the mean time to do without them, and they gathering strength to continue without Government aid. (Ho. Ex. Doc. No. 107, 53d Cong., 3d Sess.; Rec. 15.) The Indian appropriation acts for the fiscal years 1896 and 1897 declared it to be "the settled policy of the government to hereafter make no appropriation whatever for education in any sectarian school," but both these and the preceding and two following similar acts provided that the Secretary of the Interior might make contracts with contract schools, under certain conditions, and only to an amount not exceeding certain annually diminishing percentages (80, 50, 40, 30, and 15 per cent. respectively) of the amount so used for the fiscal year 1895. The appropriation for the fiscal year 1900 was accompanied by the statement, "this being the final appropriation for sectarian schools." (28 Stats. 903; 29 Stats. 345; 30 Stats. 79, 567, 962.)

The St. Francis Boarding School, on the Rosebud Reservation, South Dakota, a sectarian school, had for some time previously been one of the contract schools, and in the fiscal years 1895 to 1900 inclusive the contract was paid for out of the appropriation for the Sioux treaty fund. (Rec. 34–39.) No contract was made with it for the fiscal years 1901 to 1904 inclusive, and in the Indian Commissioner's reports for those years it is referred to as a mission school supported by the

Roman Catholic Church. (Appx.,* p. 86, 92, 98, 103.) A contract was made with it for the fiscal year 1905 (Rec. 42), and in May, 1906, the Commissioner of Indian Affairs, acting in behalf of the United States, again contracted with the Bureau of Catholic Indian Missions, a corporation of the State of Maryland, as of July 1, 1905, for the care, education and maintenance, during the fiscal year 1906, of 250 Indian pupils of the Sioux tribe at this sectarian school, at a total cost of $27,000, to be paid out of the Sioux treaty fund and the income of the Sioux trust fund. The Secretary of the Interior approved this contract, and the sum of $24,000 was set apart from the Sioux treaty fund, and $3,000 from the income of the Sioux trust fund, for this purpose, but the President of the United States directed that no payments should be made under it, in order that the validity of the contract might be determined by the courts. (Rec. 12-13, 49.)

This contract was made in accordance with the request of 212 of the Rosebud Sioux, representing 669 shares out of a total of 4,986 Indians on the rolls of the Rosebud Reservation, but a large number of Indians protested against such use of the treaty and trust funds. (Rec. 28, 13.)

On May 11, 1906, the appellants, who had always protested against such use of the treaty and trust funds, filed this bill, in behalf of themselves and all other members of the Sioux tribe of the Rosebud Reservation, praying for a perpetual injunction to restrain the Commissioner of Indian Affairs from making the contract in question, and from carrying it into effect if made, to restrain the Secretary of the Interior from approving the said contract or authorizing the payment of any money thereunder, and to restrain the Secretary of the Treasury, the Treasurer of the United States and the

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* For the convenience of the Court, those portions of the Indian Commissioner's reports which have been used as evidence, under the stipulation of April 19, 1907 (Rec. 49–50), have been printed as an appendix to this brief. This appendix is referred to in the argument as "Appx."

Comptroller of the Treasury from participating in any way in the payment of any money under the said contract.

On April 15, 1907, the Supreme Court of the District of Columbia entered a decree that an injunction should issue as prayed, in so far as concerned the Sioux treaty fund, but not as regards the income of the Sioux trust fund, and that each side should pay its own costs. On April 15, 1907, the present appellants appealed from so much of this decree as refused an injunction as regards the income of the Sioux trust fund, and also from so much of the decree as imposed upon them any part of the costs. The present appellees also took a cross-appeal. (Rec. 47–49.)

The appeals were heard by the Court of Appeals of the District of Columbia on May 21, 1907, Mr. Justice Wright, of the Supreme Court of the District, sitting in place of Mr. Justice Robb. Before the decision was announced Mr. Justice McComas died, and subsequently the cases were submitted by stipulation to the Chief Justice and Mr. Justice Wright. On November 29, 1907, the Court of Appeals affirmed the decree of the Supreme Court of the District of Columbia in so far as it denied an injunction respecting the income of the trust fund, but reversed that decree in so far as it enjoined the payment from the treaty fund, and remanded the case with directions to dismiss the bill at the cost of the complainants. Whereupon this appeal was taken.

ASSIGNMENTS OF ERROR.

The Court of Appeals of the District of Columbia erred:

1. In holding that the Secretary of the Interior and the Commissioner of Indian Affairs had legal authority to contract, in behalf of the United States, for the education of Indian pupils in a sectarian school.

2. In holding that the Secretary of the Interior and the Commissioner of Indian Affairs had authority to apply any of the money of the Sioux treaty fund in payment under a con-

tract for the education of Indian pupils at a sectarian school.

3. In holding that the Secretary of the Interior and the Commissioner of Indian Affairs had legal authority to apply any of the money of the income of the Sioux trust fund in payment under a contract for the education of Indian pupils at a sectarian school.

4. In reversing the decree of the Supreme Court of the District of Columbia in so far as it enjoined the payment from the Sioux treaty fund.

5. In affirming the decree of the Supreme Court of the District of Columbia in so far as it denied an injunction respecting the income of the Sioux trust fund.

BRIEF OF ARGUMENT.

The issue in this case concerns the legality of a contract made by the Commissioner of Indian Affairs, on behalf of the United States, and approved by the Secretary of the Interior, for the education of certain Indian pupils in a sectarian school, the money to be paid from the Sioux treaty fund and from the income of the Sioux trust fund. The following propositions cover the ground of the appellants' argument:—

1. The term "contract schools," used in the Indian Appropriation Act for the fiscal year 1895, directing an investigation, and in the similar acts for the years 1896–1900 inclusive, imposing gradually increasing limitations upon the Secretary of the Interior's power to contract, included the schools for which the contracts were then payable out of Indian treaty and trust funds.

2. After the close of the fiscal year 1900 the Secretary of the Interior could not legally make or authorize any contract, in behalf of the United States, for the education of Indian pupils in any sectarian school.

3. The Secretary's power to make such a contract was taken away altogether, and not merely as regards contracts

where the money was to be paid out of appropriations made by Congress expressly for the support of Indian schools.

4. As regards the taking away of the Secretary's power to make such a contract, no distinction can be drawn between money expressly appropriated by Congress for the support of Indian schools and money appropriated by Congress in fulfillment of Indian treaties and available for education.

5. Nor can any distinction be drawn in this respect between money expressly appropriated by Congress for the support of Indian schools and money paid by the Government as interest on Indian funds held in trust by the Government.

These propositions will be considered in their order:

(1)

THE TERM "CONTRACT SCHOOLS," USED IN THE INDIAN APPROPRIATION ACT FOR THE FISCAL YEAR 1895, DIRECTING AN INVESTIGATION, AND IN THE SIMILAR ACTS FOR THE YEARS 1896–1900 INCLUSIVE, IMPOSING GRADUALLY INCREASING LIMITATIONS UPON THE SECRETARY OF THE INTERIOR'S POWER TO CONTRACT, INCLUDED THE SCHOOLS FOR WHICH THE CONTRACTS WERE THEN PAYABLE OUT OF INDIAN TREATY AND TRUST FUNDS.

As the appellants found their case upon certain legislation enacted by Congress in regard to contract schools it is necessary to understand clearly what that term "contract schools" meant, before proceeding to consider the effect of the legislation.

The Indian Appropriation Act of August 15, 1894, Chap. 290 (28 Stats. 311), directed the Secretary of the Interior "to inquire into and investigate the propriety of discontinuing contract schools" and to submit "an estimate of the annual cost, if any, of substituting Government schools for contract schools." The Secretary reported in regard to contract schools, suggesting "that they should be decreased at the rate of not less than 20 per cent. a year." (Ho. Ex. Doc. No. 107, 53d Cong., 3d Sess.; Rec. 15.) The appropriation

acts for the next five years (28 Stats., 903; 29 Stats., 345; 30 Stats., 79; 30 Stats., 567; 30 Stats., 942) authorized the Secretary of the Interior to "make contracts with contract schools" to a limited extent, the amount of such contracts being fixed at a gradually decreasing percentage of the amount so used for the fiscal year 1895, which five successive reductions were obviously intended to carry out the Secretary of the Interior's suggestion. Neither the appropriation acts nor the Secretary's report of his investigation defined the term "contract schools," apparently because there could be no doubt as to its meaning. It simply meant *the schools with which the Interior Department entered into contracts for the education of Indian pupils.*

This would seem self-evident, the natural meaning of the words excluding any other idea; but there is also positive evidence that although the money required for these contracts was taken mainly from the annual appropriation for the support of Indian schools, the term "contract schools" was not restricted to the schools supported out of those appropriations. The record (pp. 34–39) contains official statements of the sectarian schools supported from Indian treaty and trust funds in the fiscal years 1895 to 1900 inclusive, and the Indian Commissioner's reports for those years (Appx., 55–82) show that nearly all the schools mentioned in these statements were officially reported as "contract schools" in each year respectively. Thus the statement for 1895 (Rec. 34; see question 6, Rec. 32) shows five sectarian schools supported from Indian treaty and trust funds, all of which appear in the list of contract schools in the Indian Commissioner's report for 1894. (Appx., 52,53.) Not all of these schools appear under precisely the same name in both lists, but the discrepancies are explained on page 46 of the record, so that the identity of the schools is shown beyond a doubt. They are the schools at the Osage Agency, Pine Ridge Agency, Rosebud Agency and Sac and Fox Agency, and they are mentioned as "contract schools" for both the fiscal years 1894 and 1895.

The Indian Commissioner's report for 1895 (Appx., 59) mentions all five of these schools as among the contract schools for that year, but it excludes one of them (Sacred Heart Boarding School at the Sac and Fox Agency, called St. Mary's Academy, Sacred Heart, Okla., in the statements on pages 34–39 of the record) from the list of contracts for 1896. This latter school, as well as another at the same place, were supported from an Indian treaty fund in 1896 (Rec. 35) but apparently without a formal contract.

Comparing the Indian Commissioner's report for 1896 (Appx., 62–64) with page 36 of the record, the schools at the Osage, Pine Ridge, and Rosebud Agencies, supported by Indian treaty and trust funds, are again named among the contract schools for 1897, besides the similarly supported Grace Mission and Immaculate Conception Schools at Crow Creek agency.

In the Indian Commissioner's report for 1897 (Appx., 70) the schools at Pine Ridge and Rosebud (supported from Indian treaty and trust funds, see Rec. 37) appear as contract schools for 1898, but while two Osage schools are referred to, they do not appear in the list of contract schools for 1898, although they were actually supported from treaty and trust funds in that year (Rec. 37), the contracts in regard to them being regarded as in some way different from those with other schools. This was inconsistent with the earlier practice, as well as with that observed in the case of the schools at Pine Ridge and Rosebud, which were always kept in the lists of contract schools.

Comparing the statement for 1898–9 (Rec. 38) with the Indian Commissioner's report for 1898 (Appx., 73), and also comparing the statement for 1899–1900 (Rec. 39) with the Indian Commissioner's reports for 1899 and 1900 (Appx., 76–77, 79) the same facts appear. The Holy Rosary Boarding School at Pine Ridge and the St. Francis Boarding School at Rosebud, were supported from Indian treaty and trust funds (Rec. 38, 39), and were again recognized as contract schools. The same is true of the Kate Drexel Boarding School on the Uma-

tilla Reservation, supported from an Indian trust fund in 1900. (Rec. 39.)

The fact that schools supported from Indian treaty and trust funds were named in the lists of contract schools reported to Congress, in each of the six years during which Congress was gradually changing its policy in regard to contract schools, abundantly proves that when Congress used the term "contract schools" in the statutes above referred to, it understood that term as including all schools with which contracts were made for the education of Indian pupils. Moreover, it must not be supposed that this was a new use of the term "contract schools." It is true that before Congress began to change its policy towards these schools the Indian Commissioner's reports were less specific, and treated Indian education more generally, without distinguishing between contract schools and others, but in the case of tribes having funds available for education, under treaty stipulations, contracts were made with sectarian schools payable out of such funds, and this had been the practice from the first, as the appellees' answer in this case clearly admits. (Rec. 14.) There can be no doubt, therefore, that when Congress in 1894 directed the Secretary of the Interior "to inquire into and investigate the propriety of discontinuing contract schools and whether, in his judgment, the same can be done without detriment to the education of Indian children, and that he submit to Congress, at the next session, the result of such investigation, including an estimate of the annual cost, if any, of substituting Government schools for contract schools," and when the Secretary reported, suggesting a plan for gradually doing away with the contract schools, making no distinctions among them, both Congress and the Secretary were referring to the contract schools in general, and not merely to those of them which were supported from the appropriations expressly made by Congress for Indian education, to the exclusion of the contract schools supported from Indian treaty and trust funds.

It is true that the new Indian Commissioner, who took

office in 1897, differed slightly from his predecessor in his view of the contracts made for the two schools on the Osage Reservation as well as for a school for the Pottawatomies, excluding the amounts paid to these schools in 1895 from the computation of the total amount used for contract schools in that year, and also regarding the contracts with these schools as outside of the limits imposed by Congress upon his power to contract. While this peculiar view was at variance both with the earlier practice of the Bureau and with the practice of the same Commissioner in regard to other similar schools, it seems either to have escaped the notice of Congress or to have been thought too unimportant to call for positive action. In fact it was more a matter of bookkeeping than anything else, since its effect was to reduce the amount computed as used for contract schools in 1895, and hence to reduce the percentages available for such schools in 1897 and subsequently, which diminution of the Secretary's power to contract counterbalanced to some extent his additional exercise of that power in regard to the Osage and Pottawatomie schools. During the years 1897–1900 inclusive the Commissioner still had undoubted authority to make contracts with sectarian schools to a certain extent, and the mere fact that he adopted a view which slightly increased his authority, beyond that claimed by his predecessor, furnishes no ground for assuming that when Congress made "the final appropriation for sectarian schools" in 1899 (30 Stats. 942), and permitted the Secretary of the Interior to make contracts with contract schools for the fiscal year 1900, to an amount not exceeding 15 per cent. of the amount so used for the fiscal year 1895, it used the term "contract schools" in any limited sense, not including contract schools supported from Indian treaty and trust funds.

(2)

AFTER THE CLOSE OF THE FISCAL YEAR 1900 THE SECRETARY OF THE INTERIOR COULD NOT LEGALLY MAKE OR

AUTHORIZE ANY CONTRACT, IN BEHALF OF THE UNITED STATES, FOR THE EDUCATION OF INDIAN PUPILS IN ANY SECTARIAN SCHOOL.

The opinion of the Court of Appeals begins with a serious error in a statement of fact, which misstatement indicates that that court has failed to grasp the bearing of some of the important facts of the case. Mr. Justice Wright says:

> For many years prior to 1905 the Government of the United States had made, with mission schools of various denominations, annual contracts for the education of Indian children. Amongst these was a sectarian school maintained on the Rosebud Reservation by the Bureau of Catholic Indian Missions, a corporation of the State of Maryland. (Rec. 54.)

The contracts referred to were made for the years prior to 1901, while for 1901 to 1904 inclusive none were made, except as to two Roman Catholic schools for the Osages and (for 1904 only) a Roman Catholic school for the Menomonees, which were treated as peculiar exceptions, as the Indian Commissioner's reports clearly show. During those four years the St. Francis School on the Rosebud Reservation, with which this case is concerned, was a mission school, wholly supported by the Roman Catholic Church. (Appx., pp. 86, 92, 98, 103.) The contract now under consideration was not, as the court below intimates, such as had been made annually for many years, but, on the contrary, no such contract was made for the four years immediately following the fiscal year 1900, for which, to quote the statute (30 Stats. 942), "the final appropriation for sectarian schools" was made. The full significance of this fact will appear later, but the misstatement of the Court of Appeals in regard to it deserves to be briefly noticed at the outset, because it is certain that after the fiscal year 1900 no contract was made with any sectarian school maintained on the Rosebud Reservation until 1905,

although an annual contract had been made with such school for a number of years down to 1900. Inasmuch as whatever restriction Congress imposed upon the Secretary of the Interior's power to contract with sectarian schools became most completely effective at the close of the fiscal year 1900, the absence of any contract with the sectarian school on the Rosebud Reservation until four years thereafter is a fact of some significance, as indicating a belief that the restriction had become a total prohibition, and the mistake of the Court of Appeals in overlooking this fact seems to have had some influence upon its decision.

The appellants submit that, even without regard to this mistake, the Court of Appeals has reached its conclusion by an erroneous course of reasoning. In the first place, it has looked at the whole matter exclusively from the standpoint of what it considered the rights of the Indians in Indian treaty and trust funds, not from the standpoint of the proper attitude of the Government towards sectarian bodies; and secondly, it has treated these funds as if they were the property of the individual Indians, which each individual was entitled to control the disposition of, to the extent of his pro rata share. These points will be considered below, but in considering the intention of Congress it should be borne in mind from the start that the proper attitude of the Government towards sectarian bodies is vastly more important than the more or less beneficial use of any particular fund; for the former concerns every citizen, and will do so as long as a government exists in this country, while the latter concerns only the particular beneficiaries of the fund, and only during the period of the existence of the fund. It is only fair to assume, therefore, that Congress, when legislating with regard to the power of the Secretary of the Interior to make contracts with sectarian schools, had in mind the more important matter as well as the less important, and that it gave, as was only proper, greater weight to the former than to the latter; or at least that it did not wholly overlook the former, as the Court of Appeals seems to have done.

In order to understand the intention of Congress in the statutes imposing limitations upon the Secretary of the Interior's power to contract with sectarian schools, it is necessary to know something of the history of those schools, and their status, at the time these limitations began to be imposed. As the appellees' answer states, from early in the last century sectarian schools for the Indians were aided by the Government without any formal contract; and about 1870 the Interior Department began to contract with such schools, the payments under such contracts being made partly out of money appropriated by Congress for the support of Indian schools, and partly out of tribal funds provided for by treaty and applicable to educational purposes. In 1876 Congress adopted the policy of making appropriations annually for Indian education, and from these funds, as well as from certain tribal funds, were paid the amounts due under contracts made by the Commissioner of Indian Affairs with sectarian schools for the education of Indian pupils. (Rec. 14.)

Referring to the statutes, it appears that the act of July 15, 1870, chap. 296 (16 Stats. 335, 359), appropriated $100,000 "For the support of industrial and other schools among the Indian tribes not otherwise provided for, to be expended under the direction of the Secretary of the Interior"; and the act of March 3, 1881, chap. 137 (21 Stats. 485, 501), appropriated $85,000 "For support of industrial schools and for other education among the Indian tribes." In 1882 $50,000 were appropriated for the same purpose, similarly described. The act of March 1, 1883, chap. 61 (22 Stats. 433, 438), appropriated $400,000 "For support of Indian day and industrial schools and for other educational purposes not hereinafter provided for," and the same language has been invariably used in every year down to the present time, except that the act of July 4, 1884, chap. 180 (23 Stats. 76, 91), added the words "and in pursuance of treaty obligations," this lumping of appropriations being confined to that particular year. The same act of 1884 distinguished the appropria-

tions made expressly for Indian education (which had previously been classed with some other items of appropriations under the heading "Miscellaneous") by the heading "Support of Schools," which heading has been retained ever since.

The defendants' answer (p. 14) admits the undoubted fact that all these appropriations had been used for the payment of money due sectarian schools under contracts as well as for the support of Government schools, and it therefore follows that the words, "Support of Schools.—For support of Indian day and industrial schools, and for other educational purposes not hereinafter provided for," were well understood to include contract schools as well as Government schools. It is therefore clear that before 1895 the Secretary's power to contract for Indian education in sectarian schools was only limited by the funds at his disposal; but opposition to these contracts having developed, the Indian appropriation act of 1894 provided that the Secretary of the Interior should "investigate the propriety of discontinuing contract schools . . . and . . . submit to Congress, at the next session, the result of such investigation, including an estimate of the annual cost, if any, of substituting government schools for contract schools, together with such recommendations as he may deem proper." Accordingly the Secretary suggested that the contract schools "should be decreased at the rate of not less than twenty per cent. a year," adding that "thus in a few years more they [*i. e.*, the contract schools] would cease to exist, and during this time the Bureau would be gradually prepared to do without them; while they might gather strength to continue without Government aid." (Rec. 15.) In pursuance of this recommendation the Indian appropriation act of 1895, in connection with the appropriation "for the support of Indian day and industrial schools and for other educational purposes," contained this proviso:

> *Provided*, That the Secretary of the Interior shall make contracts, but only with the present contract schools,

for the education of Indian pupils during the fiscal year ending June thirtieth, 1896, to an extent not exceeding eighty per cent. of the amount so used in the fiscal year 1895, and the Government shall, as early as practicable, make provision for the education of Indians in government schools. (28 Stats. 903–904.)

The Indian appropriation acts for the next four years contained the following provisions:

Act of June 10, 1896, chap. 398 (29 Stats. 345).

SUPPORT OF SCHOOLS.

For support of Indian day and industrial schools, and for other educational purposes not hereinafter provided for, including pay of architect and draftsman to be employed in the office of the Commissioner of Indian Affairs, $1,235,000, . . . And it is hereby declared to be the settled policy of the government to hereafter make no appropriation whatever for education in any sectarian school: *Provided*, That the Secretary of the Interior may make contracts with contract schools and apportioning, as near as may be, the amount so contracted for among schools of various denominations for the education of Indian pupils during the fiscal year 1897, but shall only make such contracts at places where non-sectarian schools cannot be provided for such Indian children, and to an amount not exceeding fifty per cent. of the amount so used for the fiscal year eighteen hundred and ninety-five: *Provided further*, That the foregoing shall not apply to public schools of any State, Territory, County or City, or to schools herein or hereafter specifically provided for.

The succeeding portions of the act contained an appropriation of $140,000 for the construction, purchase, lease and repair of school buildings and purchase of school sites, and

also direct appropriations for a number of schools, including one sectarian school, the Lincoln Institution at Philadelphia.

Act of June 7, 1897, chap. 3 (30 Stats. 79).

SUPPORT OF SCHOOLS.

For support of Indian day and industrial schools, and for other educational purposes, not hereinafter provided for, including pay of architect and draftsman to be employed in the office of the Commissioner of Indian Affairs, $1,200,000, . . . And it is hereby declared to be the settled policy of the government to hereafter make no appropriation whatever for education in any sectarian school: *Provided*, That the Secretary of the Interior may make contracts with contract schools, apportioning as near as may be the amount so contracted for among schools of various denominations for the education of Indian pupils during the fiscal year 1898, but shall only make such contracts at places where non-sectarian schools cannot be provided for such Indian children, and to an amount not exceeding forty per cent. of the amount so used for the fiscal year eighteen hundred and ninety-five: *Provided further*, That the foregoing shall not apply to public schools of any State, Territory, County or City, or to schools herein or hereafter specifically provided for.

The appropriations for school buildings and for the support of particular schools were substantially the same as in the act of 1896.

Act of July 1, 1898, chap. 545 (30 Stats. 567).

SUPPORT OF SCHOOLS.

For support of Indian day and industrial schools, and for other educational purposes not hereinafter provided for, including pay of an architect and draftsman, to be employed in the office of the Commissioner of Indian Affairs, $1,000,000, . . . *Provided*, That the Secre-

tary of the Interior may make contracts with contract schools apportioning as near as may be the amount so contracted for among schools of various denominations for the education of Indian pupils during the fiscal year 1899, but shall only make such contracts at such places where non-sectarian schools cannot be provided for such Indian children, and to an amount not exceeding thirty per cent. of the amount so used for the fiscal year eighteen hundred and ninety-five: *Provided further*, That the foregoing shall not apply to public schools of any State, Territory, County or City, or to schools herein or hereafter specifically provided for.

The appropriations for school buildings and for the support of particular schools were substantially the same as in the act of 1896.

Act of March 1, 1899, chap. 324 (30 Stats. 942).

SUPPORT OF SCHOOLS.

For support of Indian day and industrial schools, and for other educational purposes not hereinafter provided for, including pay of an architect, draftsman, and a laborer, to be employed in the office of the Commissioner of Indian Affairs, $1,100,000, . . . *Provided*, That the Secretary of the Interior may make contracts with contract schools apportioning as near as may be the amount so contracted for among schools of various denominations for the education of Indian pupils during the fiscal year 1900, but shall only make such contracts at places where non-sectarian schools cannot be provided for such Indian children, and to an amount not exceeding fifteen per cent. of the amount so used for the fiscal year eighteen hundred and ninety-five, the same to be divided proportionately among the said several contract schools, this being the final appropriation for sectarian schools: *Provided further*, That the foregoing shall not apply

to public schools of any State, Territory, County or City, or to schools herein or hereafter specifically provided for.

The appropriations for school buildings and for the support of particular schools were substantially the same as in the act of 1896.

Beginning with the Act of May 31, 1900, chap. 598 (31 Stats. 242), the appropriation for the support of schools has been in the following form, though differing slightly in amount from year to year:

> For support of Indian day and industrial schools and for other educational purposes not hereinafter provided for, $1,200,000.
>
> For construction, purchase, lease and repair of school buildings, and for sewerage, water supply and lighting plants, purchase of school sites, $200,000.

Beginning with the Act of May 31,1900, the appropriations for the support of particular schools have not included any sectarian schools.

Taking together (1) the direction to the Secretary of the Interior in 1894 to investigate the propriety of discontinuing contract schools, and to report the cost of substituting government schools for contract schools; (2) his report advocating a gradual reduction in the contract schools during a short period of years, during which period the Government should prepare to do without them; (3) the adoption of the system advocated by him, successively restricting more and more his authority to contract with such schools; (4) the declarations in the acts of 1896 and 1897 that, subject to the restricted authority granted by those acts, it was "the settled policy of the government to hereafter make no appropriation whatever for education in any sectarian school"; (5) the declaration in the act of 1899 that the appropriation there made was "the final appropriation for sectarian schools";

and (6) the fact that since 1899 no statute has granted the Secretary any authority to contract with sectarian schools for the education of Indian pupils; the conclusion is irresistible that Congress decided to abolish the entire system of government aid to such schools, and to do so by depriving the Secretary of all authority to make any more such contracts.

Moreover, as it has been shown above that the term "contract schools" was officially used as including contract schools supported from Indian treaty and trust funds, the conclusion is irresistible that Congress made no distinction between contracts as to which the money was to come from the appropriation for the support of schools, and contracts as to which the money was to come from Indian treaty and trust funds. In either case the government was the disburser of the money—the hand which directly dispensed the aid—and the money was disbursed under a contract. To deprive the Secretary of the power to make such contracts altogether was the only effectual means of preventing him from using Indian treaty and trust funds for sectarian schools, and it would operate just as effectually in regard to such funds as in regard to funds derived from the appropriation for the support of schools.

The two declarations of "the settled policy of the Government" might really have been omitted without changing the result; for the previous declaration that "the Government shall, as early as practicable, make provision for the education of Indians in government schools," following after the direction to the Secretary to investigate the whole subject, and his report in consequence, followed by the successive limitations of his power to contract, and the large appropriations for school buildings,—all this makes it clear that Congress had resolved that after the fiscal year 1899–1900, no more contracts with sectarian schools should be made. With the close of that fiscal year, therefore, the Secretary's power to contract with sectarian schools, a power already greatly reduced, came wholly to an end, and no such power was ever subsequently granted to him.

As regards the declarations of "the settled policy of the Government" it is clear that the exceptions from the complete operation of that policy, made in the appropriation acts of 1895 to 1899 inclusive, were merely temporary expedients, adopted in fairness to the supporters of the sectarian schools and to tide over the time until the Government could provide an adequate number of its own non-sectarian schools. With these permissive and temporary exceptions, Congress has, as a matter of fact, made "no appropriation whatever for education in any sectarian school," since the policy was adopted, and the policy itself has become settled in fact as far as Congress can settle it, and it can only be changed by the same authority which established it.

Admitting, therefore, that Congress can change "the settled policy of the Government," it is nevertheless clear that neither the Secretary of the Interior nor the Commissioner of Indian Affairs can do so. The words "no appropriation whatever" must bind them absolutely. Section 3678 of the Revised Statutes reads:

> All sums appropriated for the various branches of expenditure in the public service shall be applied solely to the objects for which they are respectively made, and for no other.

The effect of this provision is to make unlawful the diversion of funds appropriated for one object of expenditure to another object of expenditure. (17 A. G. Opins., 481; see also 17 A. G. Opins., 574, 576; 18 A. G. Opins., 463.)

Moreover section 2097 provides:

> No funds belonging to any Indian tribe with which treaty relations exist shall be applied in any manner not authorized by such treaty, or by express provisions of law; nor shall money appropriated to execute a treaty be transferred or applied to any other purpose, unless expressly authorized by law.

From these provisions it is evident that to declare that "no appropriation whatever" shall be made for education in any sectarian school is to declare that no money derived from any appropriation whatever shall be applied to such education, because to do so would be to apply it to an object for which the appropriation was not made.

In view of the positive language of the statutes above referred to, it is not surprising that the reports of the Indian Commissioner from 1900 to 1904 inclusive recognize that the power to contract with sectarian schools no longer exists. Thus the report for 1900 says (p. 27; Appx., 81, line 31):

> In the act making appropriations for the ensuing fiscal year 1901 no authority is given to make these contracts.

The former contract schools were thereafter known as mission schools, the report stating that the Government only assumes "supervisory care over them . . . for the purpose of observing the care and attention bestowed upon the pupils, their progress, health, and general condition" (p. 20; Appx., 82, line 13).

The report for 1901 shows Hampton Institute (a nonsectarian school) as the only contract school (p. 29; Appx., 83, second paragraph), and says:

> Congress having failed to provide in the appropriation act for the fiscal year 1901 for the continuance of the *contract-school system*, those schools *did not receive Government aid during the year*. All were continued, however, as mission schools, and therefore are now classed (except Hampton Institute, for which Congress made a specific appropriation) under the general head of "mission schools."

Similarly the report for 1902 (p. 39; Appx., 89), after enumerating the various mission schools, says:

> These institutions are controlled by the church authorities, who furnish the amounts required for their support and maintenance, *Government aid to sectarian schools having been withdrawn* after Congress in the appropriation act for fiscal year 1901 discontinued the contract-school system. *The only exception* made was in the appropriation for Hampton Normal and Agricultural College, in Virginia, with which school this office has a contract for the education of 120 Indian pupils.

The report for 1903 (p. 22; Appx., 95) says:

> *Contract schools were abolished* by the discontinuance of Government aid by Congress in the Indian appropriation act of 1901. However, a special appropriation was made in the Indian appropriation act for the fiscal year 1903, for the education of 120 pupils at the Hampton (Va.) Normal and Agricultural Institute.

The report for 1904 (p. 45; Appx., 100) does not state in so many words that no government aid to sectarian schools was given, the policy in that respect being by that time well known, but the reference to the mission schools states that they are "supported by voluntary contributions," and it is expressly stated (p. 44; Appx., 101) that:

> Under special appropriation of Congress a contract was made for the education of 120 pupils in the Hampton, Va., Normal and Agricultural Institute.

If there could be any reasonable doubt as to the intention of Congress to deprive the Secretary of all power to contract with sectarian schools, these repeated official statements of the Indian Commissioner, during the five years following

the last statute which granted any such authority even to a limited extent, would seem to set all such doubt at rest. It is submitted, however, that there is really no room for any such doubt, and that the Indian Commissioner's reports simply regard the matter as so completely settled that all discussion of it must be superfluous.

In spite of these positive statements of the Indian Commissioner in the reports for 1901 to 1904 inclusive, to the effect that contract schools no longer existed, it now appears that in each of those years contracts were made with two sectarian schools on the Osage Reservation, the money being paid from the Osage treaty and trust funds, and that in 1904 a contract was made with a sectarian school in Wisconsin, the money being paid from the Menomonee log fund, which was a trust fund, but it is very significant that these contracts were *not reported to Congress*, unless a few casual references in the reports of local agents be considered as reports to Congress. Thus in the report for 1901, above quoted (Appx., 86), the Commissioner stated that the two schools on the Osage Reservation were supported by the Catholic Church, which necessarily implied that these schools were not supported by the Government, either in its capacity of trustee for the Osages, or in any other capacity, and it is only from the report of the Osage agent (Appx., 88) that one may learn that the interest of the Osage trust fund "is used in maintaining . . . the St. John and St. Louis boarding schools." As a matter of fact the Osage treaty fund was also used for that purpose.

The report for 1902 (p. 39; Appx., 91) repeats the statement that these two schools were supported by the Catholic Church, and the report of the Osage agent (p. 294; Appx., 94) merely refers to the capacity "of St. Louis contract (Catholic) school for girls" and "St. John contract (Catholic) school for boys," saying nothing as to the nature of the contracts with those schools. The reports for 1903 (p. 22; Appx., 97) and 1904 (p. 45; Appx., 102) repeat the statement that these Osage schools were supported by the Catholic Church, and

the Osage agent's reports (Appx., 99, 105) contain nothing at variance with these statements. His report for 1903 mentions the Kaw boarding school and the Osage boarding school, but makes no mention of the two sectarian schools, while his report for 1904 mentions "the two Catholic boarding schools on the Reservation," but contains nothing to suggest that these schools were operated under contract.

The Commissioner's report for 1904 (Appx., 103) also states that St. Joseph's school, on the Green Bay Reservation in Wisconsin, was supported by the Catholic Church, thereby implying, as in the case of the Osage schools, that it was not supported by any contract with the Government, but the same report has appended to it a report (p. 371; Appx., 105) from the superintendent of St. Joseph's Industrial School at Green Bay, stating that that school had depended on charitable contributions until December 1, 1903, "but after that we were aided by the Hon. Commissioner of Indian Affairs, W. A. Jones, to whom we are under great obligation for the means we have received." This aid is now seen to have amounted to $7368.38. (Rec. 41.)

The record does not disclose the precise nature of the arrangements between the Indian Commissioner and these two Roman Catholic Osage Schools in 1901–1904, nor of that made with the school at Green Bay in 1904, but as the Osage agent used the word "contract" in 1902, there must have been contracts of some sort. If those contracts were regarded as legal, it is impossible to understand why their existence should not have been fully reported to Congress, precisely as was done by the present Commissioner in the year 1905 and subsequently, in regard to all contracts made with sectarian schools; and at all events the repeated assertions that no such contracts existed indicates a belief on the part of Commissioner Jones that these Osage and Green Bay contracts were of a peculiar and exceptional nature, and that as a general proposition he had no authority to make contracts with sectarian schools.

In ascertaining the meaning of any statute, the apparent reason for the enactment of its provisions must undoubtedly have some weight; and in the present case the only fundamental reason which can be suggested for the action of Congress in abolishing, as the Court of Appeals concedes has been done, the Secretary's power to contract with sectarian schools in cases where the consideration for a contract would have to be paid out of the appropriation for the support of schools, applies equally well to cases where the consideration would be paid out of Indian treaty and trust funds. This fundamental reason was evidently the wish to conform, wherever circumstances made such conformity practical, to the spirit of the constitutional provision that "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof"; and in this connection the erroneous reasoning of the Court of Appeals becomes apparent. As already intimated above, Mr. Justice Wright has looked at the whole matter exclusively from the standpoint of what he considers the rights of the Indians in Indian treaty and trust funds, not from that of the proper attitude of the Government towards sectarian bodies; although the latter, which concerns the whole population of the country, irrespective of race, is vastly more important than the former, which concerns the Indians only. Throughout his whole opinion the learned Judge is seeking to establish the difference between Indian treaty and trust funds, and money voluntarily appropriated by Congress for Indian education, without any treaty obligation; and in so doing he forgets that the particular source from which the Government derives the money which it may use for any particular purpose is of less consequence than the propriety of its action in using any money at all for such a purpose.

As is well known, the constitutional provision that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof" applies to the National Government only, not to the States, and the

former has never been charged with violation of it, so that the courts have not been called upon to define its terms with any great particularity. The nearest approach to a definition is found in Chief Justice Waite's opinion in *Reynolds v. United States* (98 U. S., 145, 164), where he quotes Jefferson's allusion to the prohibition as "building a wall of separation between Church and State," and adds:

> Coming as this does from an acknowledged leader of the advocates of the measure, it may be accepted almost as an authoritative declaration of the force and scope of the amendment thus secured.

If "a wall of separation" has been built between the United States and every religious denomination, it necessarily follows that the actions of the United States must always be undenominational. This is recognized by Professor Ordronaux in his "Constitutional Legislation" (p. 235), where in discussing the term "religion," as used in the Constitution, he says:

> The Christian religion being the predominant religious belief of the people, Christianity has come to be regarded as part of the common law of the land. . . . Underlying the whole civil administration of the government, whether State or National, and in whatever form it enters into its positive laws, it is always understood as being *an undenominational rule of conduct*, because embodying those essentials of religious faith, which are broad enough to include believers in both the Old, as well as the New Testament.

The Government being bound to observe "an undenominational rule of conduct," it can never act in a sectarian capacity, either in the use of its own funds or in that of the funds of others for whom it is trustee. It cannot be trustee of a sectarian institution. If, for instance, Mr. Smithson had by his will given the whole of his property to the United

States to found a sectarian institution, the Government could not have accepted the trust, and some other trustee would have had to be appointed. It is the absolutely non-sectarian character of the Smithsonian Institution which made it possible for the Government to accept the trust.

In view of the existence of the contract school system for so many years prior to its legal termination in 1900, no court would presumably now hold that system to have been unconstitutional, and yet its termination was undoubtedly due to a desire to conform to the spirit of the Constitution even in matters to which its prohibition did not absolutely apply. The maintenance of the "wall of separation between Church and State," which the Constitution has built, undoubtedly makes it inconsistent and undesirable for the Government to participate in any way in the maintenance of a sectarian institution, and this whether the participation take the form of a payment of public money raised by taxation or of a payment of money held by it as trustee. It is the Government's participation in the maintenance of a sectarian institution which is objectionable, and it does so participate when it expends for such a purpose money which it holds as trustee, or money which it is obliged by treaty to spend for the benefit of an Indian tribe, just as much as if the money were its own, and there were no legal obligation to expend it at all.

The sectarian schools having been the first in the Indian field, and the Government having been rather slow to acknowledge any obligation to educate the Indians generally, it was perfectly natural that its first efforts in that direction should have taken the form of aiding the existing sectarian schools, and that under the then existing conditions the advantages of that system should for some time have seemed to outweigh the disadvantages of alliances with sectarian bodies. Ultimately, however, as the Government became more familiar with the whole subject of Indian education, and the experiment of non-sectarian schools, managed by the Government itself, had been successfully tried, it was

realized that the time had come for applying, in the matter of schools, that doctrine of the "wall of separation between Church and State" which the Constitution had positively imposed upon Congress as to certain matters, and which it manifestly held up as the ideal for every sphere of the Government's action.

Congress realized, therefore, that while the Government's policy of maintaining or aiding in the maintenance of sectarian schools may have been desirable as a temporary expedient, it really involved co-operation in the work of a sectarian institution, or in other words, action in a sectarian capacity, a course too clearly inconsistent with a thoroughly "undenominational rule of conduct," and with the spirit of the Constitution, to be maintained any longer than necessary, and that the necessity had ceased to exist. This realization it was which must have operated upon the mind of Congress in prohibiting these sectarian contracts, rather than any consideration in regard to the particular character of the fund which the Government used for such purposes; and it was this which alone can explain the broad language of the statutes, declaring it "the settled policy of the Government to hereafter make *no appropriation whatever* for education in *any* sectarian school," and in the successive restrictions, culminating in an absolute termination, of the Secretary of the Interior's authority to contract with such schools.

Seeing then that Congress must have intended its prohibition of contracts for education in sectarian schools to be an absolute prohibition upon the Secretary of the Interior, without regard to the particular character of the fund which he might use for the purpose, the contention that this prohibition affected only the use of the money appropriated by Congress for the support of schools must necessarily fall. The Supreme Court of the District of Columbia recognized the truth of this, as far as concerned the Sioux treaty fund, holding that the use of that fund for contracts with sectarian schools was within the prohibition, but the learned judge sitting in the

Court of Appeals denies even this. It is worth while to examine his reasons for reaching such a conclusion. The reasons appear to be these:

(1) The appropriation for "Support of Schools" differs in "nature and character" from the appropriation for "Fulfilling Treaty Stipulations." (Rec. 60.)

(2) The two appropriations were made separately, and the prohibition of contracts with sectarian schools is found "only in juxtaposition with the very words creating" the appropriation for the support of schools. (Rec. 60.)

(3) The declarations of "the settled policy of the Government," found in the acts of 1896 and 1897, were nullified by the appropriations subsequently made for sectarian schools. (Rec. 60–61.)

(4) The successive reductions, in the statutes of 1895–1899, of the amount available for contracts with sectarian schools, reached only to the appropriation for the support of schools. (Rec. 61.)

(5) Assuming that the declaration of "the settled policy of the Government" is still binding, it cannot involve "the policy of depriving a religious Indian of the liberty of educating his children in a school of his own sect at the cost of his own money." (Rec. 61–62.)

These reasons overlook entirely the fact that at the time when the statutes under consideration were enacted the term "contract schools" was always officially used to include schools supported by contracts payable out of Indian treaty and trust funds, and they also overlook (except to a slight degree in connection with the fifth reason) what has been shown above to be the fundamental reason for the action of Congress in the matter. Had the learned judge kept these two matters clearly before him, his conclusion might have been different.

As to the first reason, there is less difference between the appropriation for "Support of Schools" and the appropriation for "Fulfilling Treaty Stipulations" than the learned judge assumes, as regards so much of the latter as was in-

tended for Indian education. In the Sioux treaty, and similar treaties with other tribes, the Government bound itself to provide a sufficient number of schools for the Indians with whom the treaty was made, and the money available for the fulfillment of these obligations was taken from what came to be called the treaty funds, *i. e.*, the appropriations made each year for fulfilling the stipulations of the respective treaties. These appropriations were made annually, out of the public moneys of the United States, in the same appropriation bill which included the appropriation for the support of schools. In fact a portion of the Sioux treaty fund was specifically appropriated "for support and maintenance of day and industrial schools, including erection and repairs of school buildings" (substantially the same language which had been used for many years in the app opriatoin for "Support of Schools"), although the other portion of the treaty fund, specifically appropriated "for subsistence of the Sioux and for purposes of their civilization," was also regarded as available for the support of schools. (See payments to Holy Rosary school, Pine Ridge, and Immaculate Conception Mission School, Crow Creek. Rec. 44–45.)

The only difference between the appropriation for "Fulfilling Treaty Stipulations" and that for "Support of Schools" was, therefore, that the former was to fulfill obligations deliberately assumed by treaty, and therefore legally binding, while the latter was made to fulfill what was believed to be the moral obligation of the Government to educate its Indian wards, either where no treaty had been made for such purpose, or where the expenditure called for by the treaty might be inadequate. The money appropriated was in both cases of the same kind, (viz., public money raised by the taxation of the citizens), the appropriation was in both cases made in precisely the same way, and in fact in the same statute, and the ultimate disposition of the money was made in both cases through precisely the same channels (viz., the officers of the Bureau of Indian Affairs in the Department of the Interior), and

for the same purposes, viz., the support of schools. In both cases alike, if any of the money was to be applied for Indian education in sectarian schools, this would have to be done by some form of contract, entered into between the Secretary of the Interior or the Commissioner of Indian Affairs, on behalf of the Government, on the one side, and some sectarian body on the other. The contract would necessarily be in the same form in both cases, the only difference being in the designation of the precise appropriation out of which payments were to be made; the payments would be made in precisely the same way, viz., by warrants drawn upon the United States Treasury; and the relations between the United States Government and the sectarian body would be precisely the same in all respects, whether the money due under the contract were paid from the appropriation for "Support of Schools" or from the appropriation for "Fulfilling Treaty Stipulations." If, therefore, Congress intended to conform to the spirit of the constitutional requirement of an undenominational rule of action, its prohibition of contracts with sectarian schools must have been intended to prohibit all such contracts, without regard to the particular appropiation used in payment.

The learned judge says, however, that "in the absence of further legislation concerning the particular funds involved at bar, the situation may be paralleled by conceiving an instance of the education of a *cestui que trust* through application by the trustee of a trust fund created for that purpose. Once a trust fund be created and its use declared, the trustee is but the medium for its application in the particular manner. It is not his function to attach limitations or restrictions of his own." (Rec. 60.)

If the Government be trustee, it is nevertheless much more than the medium for the application of the trust in the particular manner. It is also the creator of the trust, and it retains control over the disposition of the money. The Sioux trust fund is required to be used "under the direction of the

Secretary of the Interior," and it cannot be doubted that Congress can control the Secretary in his direction of the use of that fund. So in the case of the treaty fund, Congress never bound itself to appropriate money to be applied in accordance with the wishes of individual Indians, or even of the whole tribe, but it agreed to provide "schools and instruction in mechanical and agricultural arts," reserving to the Government the right to decide what those schools and that instruction might be. Moreover, by the act of March 2, 1889, sec. 17 (25 Stats. 894), continuing this treaty fund for twenty years longer, the agreement to maintain it was expressly made "subject to such modifications as Congress shall deem most effective to secure said Indians equivalent benefits of such education." This provision unquestionably reserved to Congress the right to change the system, or any part of it, at any time, provided that "equivalent benefits" were secured to the Indians. Whatever legislation, therefore, Congress thereafter enacted, affecting in any way the Secretary of the Interior's authority to make contracts with sectarian schools, necessarily constituted a "modification" within the meaning of the act of March 2, 1889.

The learned judge says that "it is not his [the trustee's] function to attach limitations or restrictions of his own"; but yet there must be some limitations or restrictions upon the will of the officer charged with the administration of the trust, and who then is entitled to attach them? The Indians? Had the Indians who wished a contract to be made with the St. Francis School any legal right to compel it to be made? If the Secretary had refused the request, could a court have compelled him, by any legal process, to make such a contract? The very idea is absurd. As far as concerns legal right to direct the making of this contract, the Indians had no more to do with it than if it had been made without any petition from any of them, or even in opposition to their unanimous protest. There are only two men who can be regarded as legally responsible for the making of this contract, viz., the

Commissioner who executed it and the Secretary who approved it.

But the powers of the Commissioner and the Secretary are necessarily subject to limitations and restrictions, and Congress is necessarily the body possessing the "function to attach limitations or restrictions." This is not a case of Congress passing laws in conflict with a treaty, but simply of controlling the action of the Secretary of the Interior in a matter which a prior treaty and statutes had placed under his direction either directly or by necessary implication from the absence of any disposition whatever. Yet even if Congress had intended to pass a law in conflict with the treaty, it could have done so, for this court has said:

> In one of the cited cases it was clearly pointed out that Congress possessed a paramount power over the property of the Indians, by reason of its exercise of guardianship over their interests, and that such authority might be implied, even though opposed to the strict letter of a treaty with the Indians . . . .
>
> Plenary authority over the tribal relations of the Indians has been exercised by Congress from the beginning, and the power has always been deemed a political one, not subject to be controlled by the judicial department of the government. Until the year 1871 the policy was pursued of dealing with the Indian tribes by means of treaties, and of course a moral obligation rested upon Congress to act in good faith in performing the stipulations entered into on its behalf. But, as with treaties made with foreign nations, Chinese Exclusion Case, 130 U. S. 581, 600, the legislative power might pass laws in conflict with treaties made with the Indians. (*Lone Wolf vs. Hitchcock*, 187 U. S. 553, 565.)

For the learned judge to say that there is an "absence of further legislation concerning the particular funds involved

at bar," is simply to beg the question. It is true that there is no further legislation which names those particular funds, but there is legislation, couched in very positive and comprehensive language, in regard to contracts for which, as was well-known, portions of these funds had for many years been used. How then is it reasonable to contend that contracts for which these particular funds are used were intended to be excluded from the operation of the very positive and comprehensive language employed?

In this connection it should not be overlooked that the money appropriated by Congress for the Sioux treaty fund was not regarded by that body as the property of the Indians. Congress has agreed to provide "schools and instruction in mechanical and agricultural arts," but not to appropriate any definite sum for the purpose, and hence so much of the appropriation as remained unexpended at the close of any fiscal year would have to be covered back into the Treasury in accordance with Revised Statutes, §3690, unless Congress should otherwise direct. This is conclusively shown by the fact that the appropriations for 1903 (Act of May 27, 1902; 32 Stats. 245, 252) and subsequent years provide for a reappropriation of the unexpended balance for the previous year. It is clear, therefore, that the Sioux treaty fund was simply public money of the United States, appropriated for the performance of certain treaty obligations which might or might not require the entire appropriation, and in this respect it did not differ from other appropriations of the public money of the United States.

As to the second reason of the learned judge below, it is true that the appropriations for "Support of Schools" and for "Fulfilling Treaty Stipulations" were made separately, but this was a mere matter of convenience. The former was made for the benefit of all the tribes for which, in the judgment of the Indian Commissioner, it was desirable that the Government should maintain schools, and also for a few schools specially named, and this appropriation was entirely

for schools, whereas the latter was made for the fulfillment of a number of treaties with different tribes, the obligations of each treaty differing in amount and to some extent in character, and relating to other matters besides education. It was therefore practically impossible to combine these two kinds of appropriations together in a single paragraph, but they were always made in the same statute.

It is also true that the legislation in regard to contracts with sectarian schools is "found only in juxtaposition with the very words creating" the appropriation for the support of schools, but this simply illustrates the patchwork character of much of our legislation. Some of the great pieces of constructive legislation which Congress occasionally enacts may be scientifically drawn, but in the main it is not so, and the habit of injecting legislation of a general and permanent character into an appropriation bill is too well known to cause surprise. It is submitted that the natural meaning of the words used and the apparent reason for the new legislation must control, rather than the mere portion of the statute in which such new legislation chances to be placed. As a matter of fact, there is nothing in the physical position of the legislation in regard to contracts with sectarian schools to warrant the inference of the learned judge below. Congress was appropriating for the support of Indian schools, for which object, in the case of certain tribes, certain other appropriations, made in the same statute, were also partly available. Congress also wished to limit and ultimately abolish the power, previously exercised by the Secretary of the Interior, to make contracts with sectarian schools, the money for such contracts being, as was well known, paid from both kinds of appropriations. Had Congress wished to deal with the matter only so far as the appropriations for "Support of Schools" were concerned, it would naturally have used some such language as this:

> (In the Act of August 15, 1894, chap. 290.) *Provided*, that the Secretary of the Interior is hereby directed

to inquire into and investigate the propriety of discontinuing contract schools, *except such as can be supported from appropriations made in fulfillment of treaty stipulations* . . . and that he submit to Congress . . . an estimate of the annual cost, if any, of substituting government schools for contract schools (*other than such as can be supported from appropriations to fulfil treaty stipulations*), together with such recommendations as he may deem proper.

(In the Act of June 10, 1896, chap. 398.) And it is hereby declared to be the settled policy of the government to hereafter make no appropriation whatever for education in any sectarian school, *except appropriations for schools made in fulfillment of treaty stipulations; Provided*, that the Secretary of the Interior may make contracts with contract schools . . . and to an amount not exceeding fifty per cent. of the amount so used *from the appropriation for "Support of Schools"* for the fiscal year eighteen hundred and ninety-five.

(In the Act of March 1, 1899, chap. 324.) *Provided*, that the Secretary of the Interior may make contracts with contract schools . . . and to an amount not exceeding fifteen per cent. of the amount so used *from the appropriation for "Support of Schools"* for the fiscal year eighteen hundred and ninety-five, . . . this being the final appropriation for sectarian schools, *except appropriations made in fulfillment of treaty stipulations, which appropriations may continue to be used for sectarian schools.*

The acts of 1895, 1897 and 1898 would also have contained similar language, and the matter would have been settled; but as it was, Congress used broad and comprehensive language, applicable to all contracts with sectarian schools, without regard to the particular appropriations which might be used for them, and it must be presumed to have done so because

such language best expressed its intention. This language is entirely too broad and comprehensive to admit of being limited to one particular species of contracts with sectarian schools, in the absence of any positive evidence that Congress used it in that limited sense; and mere juxtaposition with the appropriation for "Support of Schools" cannot warrant its being so limited. Even the learned judge is not positive in his view, but only thinks it "likely" that the restriction was limited in its scope. The likelihood is less than he assumes, especially as he bases it on an exaggerated idea of the "significance" of the distinction between "treaty obligations" and "school gratuities." They are undoubtedly distinct as regards the obligation to appropriate the money, but when once this has been done they are precisely similar (in so far as treaty funds are used for education) as regards the objects to which and the manner in which the money is applied.

As to the third reason, the learned judge's remarks as to the declaration of policy are not wholly consistent. He first says, "If not impossible, it is at least difficult to accord to this phraseology the effect of a declaration of permanent policy, in view of the consideration that the so-called policy announced in one year is reversed the next" (Rec. 61); but on the same page, after suggesting that Congress might have "intended in each year a permanent policy and deliberately and understandingly postponed it in the next," he says, that it is "more likely that Congress never intended that the policy proclaimed should become operative or effective until after the appropriation of 1898," meaning, of course, 1899. This last suggestion is undoubtedly correct, but, if it means anything at all, it means that Congress did intend "to accord to this phraseology the effect of a declaration of permanent policy" after the five years (suggested by the Secretary of the Interior as a reasonable period during which to gradually reduce the contracts with sectarian schools) should have elapsed; but this is the very effect which the learned judge thought it impossible, or at least difficult "to accord."

That this declaration, twice announced, was really intended to stand (subject to the temporary and exceptional liberty of contract given to the Secretary during the transition period, when the substitution of government schools for contract schools was gradually taking place) as a piece of permanent legislation until Congress should see fit to modify or repeal it, is officially recognized by the fact that it appears in Vol. 2 of the Supplement to the Revised Statutes, at pages 517 and 629. As Congress has acquiesced in the printing of this declaration in this official publication, it is evident that Congress regards it as forming a part of that "permanent and general legislation" which the supplement to the Revised Statutes is authorized to contain. (See Act of Feb. 27, 1893, sec. 2; R. S. Supp., vol. 2, p. 91.)

In stating his fourth reason (Rec. 61), the learned judge undertakes to summarize the provisions of the Acts of 1895–1899 on this point, but he misquotes and apparently misunderstands them, thereby reaching an erroneous conclusion. He speaks of them as "providing in 1896 [this should be "for 1896"] in connection with the gratuitous appropriation, that the Secretary might expend 80 per cent. of the sum spent in 1895," and so on in regard to the succeeding four years; but what these acts really provided was "that the Secretary of the Interior may *make contracts* with contract schools, . . . but shall only *make such contracts* . . . to an amount not exceeding 50 [Act of 1896] per cent. of the amount so *used* for the fiscal year eighteen hundred and ninety-five." The actual language of Congress is very different from the learned judge's version of it. It does not deal directly with expenditure of money, but with the power to make contracts, without which no money could properly be expended for non-government schools, whether from these appropriations or from any other source. The word "used" employed by Congress, suggests a different meaning from the word "spent," which is employed by the learned judge. "Spent" might possibly justify the learned judge's idea that

Congress referred only to the appropriation for "Support of Schools," but "used" would seem to recognize, what was well known to be the fact, that the Secretary might have the use of Indian treaty and trust funds for this purpose, as well as the appropriation for "Support of Schools."

The effect of this incorrect version of the provisions of these acts of Congress, in connection with the words "this being the final appropriation for sectarian schools," is thus expressed:

> Thus gradually eliminating in connection with the gratuity [i. e., the appropriation for "Support of Schools"] what he was directly authorized to expend out of the gratuity, it seems equally manifest that Congress considered the limitation as reaching only to the gratuity.

The words, "this being the final appropriation for sectarian schools," cannot fairly be understood as narrowing the application of the broad and comprehensive language used in restricting the Secretary's power to contract with sectarian schools. These words simply mean "this being the final appropriation made in pursuance of the policy of gradually reducing the number of contract schools, as suggested by the Secretary of the Interior in 1894, and carried out by Congress during the succeeding years, and hereafter no money shall be appropriated for such schools." As this particular appropriation was made concurrently with that of the Sioux treaty fund, the use of that fund for contracts with sectarian schools was of course not affected for that year, but by the next year the policy adopted by Congress took effect completely, and there was no longer any authority to make the contracts, so that neither Indian treaty funds nor any other funds could lawfully be used for such contracts.

In his fifth reason the learned judge says:

> Well may it be said that as to national voluntary contributions out of the public funds, to the cause of

> Indian education, the taxpayers of the United States, who are adherents to divers creeds and to none, may claim to be consulted. The injustice to people of one creed in having their money applied to the encouragement and strengthening of schools which teach another creed, or in the farming out by the Government of its education of Indians to a particular sect, is manifest, and doubtless impressed Congress with a determination that whatever gratuitous education it afforded should not be in creeds, nor paid for to this, that, or the other sect as such. (Rec. 61–62.)

This is certainly true, but it is not the whole truth. The condemnation of "the farming out by the Government of its education of Indians to a particular sect" does indeed go pretty close to the root of the matter, and this is precisely what the appellants seek to restrain; but taking the learned judge's statement as a whole, it must be said that the commercial point of view is rather too narrow to be adopted in a question of this sort. It is not the application of any particular number of dollars to sectarian education, nor the application of dollars belonging to any particular fund, which ought chiefly to concern the taxpayers, or Congress, or this Court. The payment of money is of course involved in the question, and the appellants have brought this suit because they have an interest in the money sought to be used; but, as already stated above, there was a reason for abolishing contracts with sectarian schools, more fundamental than that of mere dollars and cents, and the dignity of Congress compels the assumption that it was that fundamental reason which influenced that body. Congress must have realized that as soon as it was manifest that Indians could be successfully educated by the Government in its own non-sectarian schools, the Government became bound to observe that "undenominational rule of conduct" which the Constitution prescribes, and was therefore bound to break off all contractual relations with

sectarian schools; and from this point of view such contractual relations are just as objectionable, whether the particular fund expended in consequence of them comes into the Interior Department's hands from one source or another.

Moreover, even from the dollar and cent standpoint, the distinction between the use of money voluntarily appropriated by Congress, and that of money appropriated in fulfillment of treaties, for sectarian education, is not material. The "farming out by the Government of its education of Indians to a particular sect," a practice which the learned judge so properly condemns, takes place just the same whether the Government has assumed the duty of education gratuitously or as one of the considerations of a treaty. Then, too, the Government is no less bound to expend any Indian funds in its charge for the benefit of the tribe as a whole than it is to expend the public funds for the benefit of the nation as a whole, and "the injustice to people of one creed in having their money applied to the encouragement and strengthening of schools which teach another creed" is the same whether the "people" be taxpayers or Indians, and whether "their money" be money raised from taxes levied upon them or money which is to be expended for their benefit in consideration of their cession of lands or property rights to the Government.

Admitting that the policy of forbidding contracts with sectarian schools is still binding "as to national voluntary contributions out of the public funds," the learned judge holds, however, that to regard it as binding, in cases where Indian treaty and trust funds are available for education, would be "depriving a religious Indian of the liberty of educating his children in a school of his own sect at the cost of his own money." This view is based on a misconception of the relation of the Indian to these treaty and trust funds. He seems to think that these funds are all divided among the Indians of the tribe per capita, and a definite sum placed to the credit of each and expended for his benefit, and that the

Indians have a right to designate how their respective shares shall be expended. Nothing of the sort is the case. Per capita payments may indeed be made out of one half of the interest of the Sioux trust fund, but the funds to be used for the contract in the present case are those "which are not susceptible of equal division," and as to which "there is no per capita division of any balance." (Rec. 33, ans. No. 5.) These funds are exclusively tribal funds, to be expended exclusively for the benefit of the tribe as a whole, and no Indian has any individual property right in them. The individual Indian, religious or irreligious, has no right to call any part of these funds "his own money," as the learned judge calls it, or to demand "the liberty of educating his children in a school of his own sect at the cost of" that money, any more than the religious taxpayer has a right to call his proportion of the money raised by taxation his own money, and to demand that it be applied to educating his children in a school of his own sect.

The individual Indian has a right to demand that these tribal funds be expended *according to law*, but there his right in them begins and ends. The appellants have availed themselves of this right to bring this suit, but they could not have demanded that a similar contract be made with the school of their own religious body, which exists on the Rosebud Reservation. (Appx., 103.) If it be thought that the Indians ought in fairness to have greater individual rights in these funds, and that a per capita distribution should be made, so that the Indians could themselves spend their per capita shares for sectarian education, that is a matter for Congress to consider; but a court cannot enlarge the rights of the Indians beyond the bounds which Congress has fixed.

From this review of the grounds given by the learned judge, sitting in the Court of Appeals, in support of his conclusion, it appears that they are partly based upon misconceptions of fact and partly upon erroneous lines of reasoning. They appear to fail at every point, and it is submitted that the

only reasonable conclusion in regard to the intention of Congress, in its legislation as to contract schools in the years 1894–1899 inclusive, is that the power of the Secretary of the Interior to make or authorize, on behalf of the United States, any contract for the education of Indian pupils in sectarian schools, was to cease at the close of the fiscal year 1900.

(3)

THE SECRETARY'S POWER TO MAKE SUCH A CONTRACT WAS TAKEN AWAY ALTOGETHER, AND NOT MERELY AS REGARDS CONTRACTS WHERE THE MONEY WAS TO BE PAID OUT OF APPROPRIATIONS BY CONGRESS EXPRESSLY FOR THE SUPPORT OF INDIAN SCHOOLS.

(4)

AS REGARDS THE TAKING AWAY OF THE SECRETARY'S POWER TO MAKE SUCH A CONTRACT, NO DISTINCTION CAN BE DRAWN BETWEEN MONEY EXPRESSLY APPROPRIATED BY CONGRESS FOR THE SUPPORT OF INDIAN SCHOOLS AND MONEY APPROPRIATED BY CONGRESS IN FULFILLMENT OF INDIAN TREATIES AND AVAILABLE FOR EDUCATION.

These two propositions are merely corollaries of the second proposition above stated, and necessarily have been fully considered in the foregoing argument.

(5)

AS REGARDS USE UNDER CONTRACTS WITH SECTARIAN SCHOOLS, NO DISTINCTION CAN BE DRAWN BETWEEN MONEY EXPRESSLY APPROPRIATED BY CONGRESS FOR THE SUPPORT OF INDIAN SCHOOLS AND MONEY PAID BY THE GOVERNMENT AS INTEREST ON INDIAN FUNDS HELD IN TRUST BY IT.

The opinion of the Court of Appeals states that "all parties agree that between the two 'Funds' there is no distinction so far as the efforts of the complainants' bill is concerned, nor does any distinction occur to us in this regard." This statement correctly represents the appellants' view, but as

the Supreme Court of the District of Columbia drew a distinction between the treaty fund and the trust fund, granting an injunction in regard to the one, but refusing it as to the other, some consideration of the matter seems advisable. The most obvious difference between the two funds is that the treaty fund is provided by an appropriation made annually by Congress in the Indian Appropriation Act, and only so much of it is available as is used in the year for which it is appropriated, whereas the principal of the trust fund is a fixed sum of $3,000,000 deposited in the Treasury to the credit of the Sioux tribe, the interest of which, at five per cent, is used, under the direction of the Secretary of the Interior, for the purposes designated in the Act of March 2, 1889, sec. 17 (25 Stats. 858, 895), including reasonable cash payments per capita. It is submitted, however, that this difference cannot affect the Secretary's power to contract with sectarian schools, nor can it prevent the use of the income of the trust fund from being controlled by the declaration of the policy of the Government in regard to sectarian schools.

While in the case of the Sioux trust fund the appropriation is made by a different system from that pursued with the Sioux treaty fund, there is still an appropriation within the meaning of the acts of 1896 and 1897, declaring it to be "the settled policy of the Government to hereafter make no appropriation whatever for education in any sectarian school," and the act of 1899 which said, "this being the final appropriation for sectarian schools." The word "appropriation," used as it is here, in statutes of the class known as "appropriation acts," is necessarily technical. It means an appropriation by Congress of money in the Treasury of the United States. Restricted as this meaning is, however, the whole phrase, "make no appropriation whatever," is as broad a phrase as the limits of that meaning will possibly permit, and it refers to any and every kind of appropriation that Congress can make, without regard to the method of such appropriation. "No appropriation *whatever*" is a phrase that can

have no limits but those which necessarily restrict the word "appropriation" itself.

The appropriations of funds in the United States Treasury are of two kinds, viz., those made for each successive fiscal year, and permanent annual appropriations. The latter are provided for in sections 3687 to 3689, Revised Statutes, and cover a number of matters (the cost of revenue collection, payment of interest on the public debt, etc.) which are expected to recur every year, either indefinitely or for a considerable period, so that it is held inadvisable to make a special appropriation for them every year. When the Revised Statutes were compiled, the Indian trust funds were all invested (under sections 2095–2096), and the income received was paid to the Indians or expended for them, and this system was not changed until the act of April 1, 1880 (21 Stats. 70). That act, providing for the payment of interest upon Indian trust funds deposited in the Treasury to the credit of Indian tribes, such payment to "be made in the usual manner, as each may become due, without further appropriation by Congress," really constitutes a permanent annual appropriation of such interest. Had that change been made before the Revised Statutes were compiled, the interest on the Indian trust funds would presumably have been included in the permanent annual appropriation system. The words "*without further* appropriation by Congress" clearly show that the provision of the act of 1880 constituted an appropriation once for all, or in other words a permanent annual appropriation.

The words "no appropriation whatever," in the acts of 1896 and 1897, must have been used advisedly, to cover appropriations of every kind, whether for a particular fiscal year or permanent annual appropriations. These words must be understood as meaning "no appropriation whatever, whether in the form of an appropriation limited to any fiscal year or by the operation of a permanent annual appropriation heretofore or hereafter established." As so understood, these words clearly apply to the permanent annual appropriation of the income of the Sioux trust fund.

No distinction can properly be made on the ground that section 17 of the act of March 2, 1889 (25 Stats. 858, 894–5), provides that the interest of the Sioux trust fund "shall be appropriated, *under the direction of the Secretary of the Interior*, to the use of the Indians receiving rations and annuities upon the reservations created by this act, . . . as follows: One half of said interest shall be so expended for the promotion of industrial and other suitable education among said Indians." It was contended in the court below that this provision gives the Secretary of the Interior an unrestricted right to use the money for the education of the Indians at any school which he may think suitable for the purpose, but it is submitted that his discretion must necessarily be subject to the control of Congress. For some years after 1889 Congress did not undertake to control the Secretary in this respect, but in and after 1895 it did, and in taking away whatever authority to contract for the education of Indian pupils in sectarian schools he might previously have been supposed to have, Congress necessarily set certain bounds to the discretion given him under the act of 1889.

It is therefore submitted that the decree of the Court of Appeals of the District of Columbia should be reversed, and the case remanded with directions that the Supreme Court of the District of Columbia issue an injunction as prayed for in the bill, with costs to the appellants. If, however, the Court should for any reason hold that the injunction should issue only as regards the use of the Sioux treaty fund for payment under the contract made in this case, even then full costs should be allowed to the appellants. The Supreme Court of the District of Columbia, when granting an injunction as regards the use of the treaty fund, ordered that each side should pay its own costs. This was assigned as error in the Court of Appeals, but the decision of that court made it unnecessary for it to consider the matter.

It is an established rule in equity that costs are prima facie allowable to the prevailing party, and it has been held

that this rule should be departed from only in cases where it would be inequitable to apply it. (*Hunter vs. Marlboro'*, 2 W. & M., 168; Fed. Cas., No. 6908; *Hovey vs. Stevens*, 3 W. & M., 17; Fed. Cas., No. 6746; *Swentzel vs. Penn Bank*, 147 Pa., 140, 154.)

The proper test as to the allowance of costs to a plaintiff is the question whether the action of the defendant has necessitated the bringing of the suit, and if it has, the costs properly fall upon the latter party. (*Madeley vs. White*, 2 Col. App., 408; *Taft vs. Schwamb*, 81 Ill., 289, 304; *Moon vs. Story*, 8 Dana (Ky.), 226; *Iasigi vs. C. B. & Q. R. R. Co.*, 129 Mass., 46; *Haviland vs. Bloon*, 6 Johns. Ch. (N. Y.), 178; *Pangburn vs. Miles*, 2 Abb. N. C. (N. Y.), 42.) In the present case the filing of this bill was wholly necessitated by the action of the Commissioner of Indian Affairs and the Secretary of the Interior, who are in fact the principal defendants, the others being merely joined ex majore cautela, to provide for all possible contingencies.

The expression "prevailing party," as used in a rule of chancery awarding costs, applies to a claimant who has prevailed on the main issue, though not to the full extent of his claim, yet to a greater extent than admitted by the defendant. (*Weston vs. Cushing*, 45 Vt., 531.)

Where a bill was filed for discovery and an injunction, and discovery having been awarded, it was ultimately ascertained that only $9 then remained unappropriated, and an injunction issued in regard to that trifling amount, the costs were allowed the plaintiff because the action of the defendant had necessitated the bringing of the suit. (*Ross vs. Adams*, 5 Dana (Ky.), 509.)

CHARLES C. BINNEY,
Solicitor for Appellants.

N. DUBOIS MILLER,
HAMPTON L. CARSON,
Of Counsel.

APPENDIX.

The portions of the Commissioner's reports used as evidence under the stipulation of April 19, 1907 (Rec. 49–50) are as follows:

REPORT FOR 1894 (Page 16).

GOVERNMENT AID TO CONTRACT SCHOOLS.

The amount set apart for the current fiscal year for the contract schools is shown in detail in the following table; also the amount set apart for the previous year:

TABLE 9.—SCHOOLS FOR INDIANS CONDUCTED UNDER CONTRACT, WITH NUMBER OF PUPILS CONTRACTED FOR, RATE PER CAPITA PER ANNUM, AND TOTAL AMOUNTS REQUIRED FOR FISCAL YEARS ENDING JUNE 30, 1894, AND JUNE 30, 1895.

		1894.		1895.	
Location of school.	*Rate per capita per annum.*	*Number allowed.*	*Amount required.*	*Number allowed.*	*Amount required.*
Avoca boarding, Minn.	$108	35	$3780	..	..
Baraga, Michigan:					
Chippewa boarding	108	50	5400	45	$4860
Bayfield boarding, Wis.	125	30	3750	30	3750
Bernalillo boarding, N. M.	125	60	7500	60	7500
California:					
Hopland day	30	20	600	20	600
St. Turibius day	*30	20	600	20	*3240
Carried forward			$21,630		$19,950

*In 1894 this was made a boarding school and $108 per pupil allowed instead of $30.

Location of school.	Rate per capita per annum.	1894. Number allowed.	1894. Amount required.	1895. Number allowed.	1895. Amount required.
Brought forward.....			$21,630		$19,950
California (*Continued*):					
Ukiah day.....	$30	20	600	20	600
Pinole day.....	30	20	600	20	600
Colville Agency, Wash.:					
Colville boarding.....	108	65	7020	65	7020
Coeur d'Alene boarding.....	108	70	7560	70	7560
Crow Creek Agency, S. D.:					
Immaculate Conception boarding.....	108	95	10260	60	6480
Crow Agency, Mont.:					
St. Xavier's Mission boarding.....	108	105	11340	85	9180
Devil's Lake Agency, N. D.:					
St. Mary's boarding, Turtle Mountain.....	108	130	14040	130	14040
Ft. Belknap Agency, Mont.:					
St. Paul's boarding.....	108	150	16200	135	14580
Graceville boarding, Minn.....	108	50	5400	50	5400
Green Bay Agency, Wis.:					
St. Joseph's boarding.....	108	130	14040	130	14040
Harbor Springs boarding, Michigan.....	108	95	10260	95	10260
La Pointe Agency, Wis.:					
Red Cliff day.....	30	30	900	30	900
Bad River day.....	30	20	900	15	450
Bayfield day.....	30	30	900	30	900
Lac Court d'Oreilles day ...	30	40	1200	40	1200
St. Mary's boarding.....	108	50	5400	50	5400
Morris boarding, Minn.....	108	90	9720	80	8640
North Yakima boarding, Wash	108	50	5400	35	3780
Osage Agency, Okla.:					
Pawhuska boarding.....	125	50	6250	50	6250
Hominy Creek boarding....	125	40	5000	40	5000
Carried forward.....			$154,620		$142,230

Location of school.	Rate per capita per annum.	1894. Number allowed.	1894. Amount required.	1895. Number allowed.	1895. Amount required.
Brought forward.....			$154,620		$142,230
Pine Ridge Agency:					
Holy Rosary boarding	$108	125	13500	140	15120
Holy Rosary boarding (supplemental).....	108	50	5400	..	..
Pueblo Agency, N. Mex.:					
Acoma day.....	30	25	750	26	750
Isleta day.....	30	30	900	30	900
Laguna day (Pahuate).....	30	25	750	25	750
Jemez day.....	30	35	1050	35	1050
San Juan day.....	30	22	660	22	660
Santa Domingo day.....	30	25	750	25	750
Taos day.....	30	20	600	20	600
Rosebud Agency, S. Dak.:					
St. Francis boarding.....	108	95	10260	95	10260
San Diego boarding, Calif.....	125	95	11875	95	11875
Sac and Fox Agency, Okla.:					
Sacred Heart boarding.....	108	50	5400	40	4320
St. Peter's Mission boarding, Montana.....	108	180	19440	180	19440
St. Catherine's boarding, Santa Fe, N. Mex.....	125	100	12500	..	..
Shoshone Agency, Wyo.:					
St. Stephen's boarding.....	108	75	8100	65	7020
Tongue River Agency, Mont.:					
St. Labre's boarding.....	108	40	4320	40	4320
Tulalip Agency, Wash.:					
Tulalip boarding,.....	108	100	10800	100	10800
White Earth Agency, Minn.:					
St. Benedict's orphan bdg...	108	90	9720	90	9720
Red Lake boarding.....	108	40	4320	40	4320
Crow Reservation, Mont:					
Montana Indust. boarding .	108	50	5400	50	5400
Carried forward.....			$281,115		$250,285

Location of school.	*Rate per capita per annum.*	*Number allowed.*	*Amount required.*	*Number allowed.*	*Amount required.*
Brought forward.....			$281,115		$250,285
Crow Creek Agency, S. Dak.:					
Grace Howard Miss. home..	..	30	3000	30	3000
Greenville Boarding, Calif....	*$75	40	1800	40	*4320
Greenville day, Calif.....	30	20	240	..	..
Halstead boarding, Kans.....	125	30	3750	30	3750
Omaha Reservation, Nebr.:					
Mission boarding.....	108	45	4860	..	..
Plum Creek boarding, Leslie, S. Dak.....	108	25	2700	15	1620
Point Iroquois day, Bay Mills, Mich.....	30	30	900	20	600
Santa Fe boarding, N. Mex....	125	50	6250	..	..
do (supplemental).....	125	15	1875	..	..
Sisseton Agency, S. Dak.:					
Goodwill Mission boarding..	108	60	6480	..	..
Shoshone Agency, Wyo.:					
Mission boarding.....	108	20	2160	20	2160
Springfield, S. Dak., Hope boarding.....	108	45	4860	45	4860
Tucson boarding, Ariz.....	125	150	18750	..	..
do (supplemental).....	125	50	6250	..	..
Wittenberg boarding, Wis.....	108	140	15120	140	15120
Total.....			$360,110		$285,715

It will be seen from the foregoing table that for contract schools, not specifically appropriated for, a reduction has been made from last year of $74,095, or over 20 per cent. Contracts have been declined or reduced wherever it could be done without depriving children of school privileges.

The following item, inserted in the Indian appropriation act for this year, and the debates in Congress while the bill was under discussion, seem to look in the same direction of

* In 1894 this was made a boarding school and $108 per pupil allowed instead of $30.

gradually discontinuing Government aid to schools for Indians carried on under private control:

> The Secretary of the Interior is hereby directed to inquire into and investigate the propriety of discontinuing contract schools, and whether, in his judgment, the same can be done without detriment to the education of the Indian children; and that he submit to Congress at the next session the result of such investigation, including an estimate of the additional cost, if any, of substituting Government schools for contract schools, together with such recommendations as he may deem proper.

REPORT FOR 1895 (Page 10).

GOVERNMENT AID TO CONTRACT SCHOOLS.

The Indian appropriation act for the current fiscal year contains the following provision in regard to decreasing and limiting the amount of assistance to be given by the Government to the support of schools for Indians carried on under private auspices, and known as contract schools:

> The Secretary of the Interior shall make contracts, but only with the present contract schools, for the education of Indian pupils during the fiscal year ending June thirtieth, eighteen hundred and ninety-six, to an extent not exceeding eighty per centum of the amount so used for the fiscal year eighteen hundred and ninety-five, and the Government shall, as early as practicable, make provision for the education of Indian children in Government schools.

The question of making this 20 per cent reduction in the amount to be allowed for contract schools, amounting to $92,701, was a very serious one, as the majority of the schools were doing good work, and it was difficult to decide where the reduction should be made. I took it to be the intention of

the Department, as well as of Congress, not to deprive Indian children of schooling, but merely to provide that Indians educated at Government expense should, so far as practicable, be educated at Government schools in preference to denominational schools. Therefore it was decided not to make a uniform "horizontal" reduction everywhere, but instead, (1) To continue without modification contracts with schools at points where the Government had no schools or had very inadequate school facilities; (2) to reduce the number of pupils to be contracted for at points where the Government had already provided good school accommodations; (3) to assume all schools hitherto carried on under private auspices which should be offered to the Government for Indian school purposes; (4) to reduce per capita allowances to schools which had been receiving rates in excess of those allowed the majority of the contract schools.

April 15 last the usual circular letter was sent out by this office to Indian school contractors, asking them to submit a statement as to what provision for caring for Indian children under contract they desired the Government to make in their behalf for the current fiscal year. From replies received and subsequent correspondence it appeared that the Government could obtain control of the following schools and conduct them hereafter as Government schools—buildings and appliances being sold or rented to the Government for Indian school use:

	Amount of last year's contract.
School at Wittenberg, Wis. (Lutheran)	$15,120
Ramona School, Crow Reservation, Mont. (Unitarian)	5,490
School at Greenville, Cal. (Woman's National Indian Association)	4,320
Hope School, Springfield, S. Dak. (Episcopal)	4,860

Also the following school desired no renewal of contract:

White's Manual Labor Institute, Wabash, Ind. (Friends)	$10,020

In this way $39,810 of the required reduction was easily provided for. It remained, therefore, to make the rest of the reductions, to the extent of over $50,000, contrary to the wish of the contractors (in all cases) and in such a way and at such points as in the judgment of the Office would be for the best interests of the Indians. To bring this about contracts with twenty-three schools were reduced either in the number of pupils or the rate allowed per pupil; contracts with four schools were discontinued, and twenty-eight schools had their contracts renewed without change.

The equipment of the Ramona School on the Crow Reservation has been purchased and that school will be operated in the future as a Government school under the Crow agent. The schools at Wittenberg, Wis., Greenville, Cal., and Springfield, S. Dak., have been rented from their owners and converted into regular Government boarding schools.

A comparative statement of the contract schools is exhibited in the following table:

TABLE 8.—SCHOOLS CONDUCTED UNDER CONTRACT, WITH NUMBER OF PUPILS CONTRACTED FOR, RATE PER CAPITA, AND TOTAL AMOUNT OF CONTRACT FOR FISCAL YEARS ENDING JUNE 30, 1895, AND JUNE 30, 1896.

	1895.			1896.		
Location of school.	*Rate per capita per annum.*	*Number allowed.*	*Amount required.*	*Rate per capita per annum.*	*Number allowed.*	*Amount required.*
Baraga Mich. (Chippewa Boarding)	$108	45	$4,860	$108	40	$4,320
Bernalillo boarding, N. M.	125	60	7,500	125	60	7,500
California:						
Hopland day	30	20	600	30	20	600
St. Turibius boarding	108	30	3,240	108	10	1,080
Ukiah day	30	20	600	30	18	540
Pinole day	30	20	600	30	18	540
Carried forward			$17,400			$14,580

Location of school.	1895. Rate per capita per annum.	1895. Number allowed.	1895. Amount required.	1896. Rate per capita per annum.	1896. Number allowed.	1896. Amount required.
Brought forward..			$17,400			$14,580
Colville Agency, Wash.:						
Colville Boarding....	$108	65	7,020	$108	60	6,480
Coeur d'Alene boardg	108	70	7,560	108	60	6,480
Crow Creek Agy., S. Dak.:						
Immaculate Conception boarding	108	60	6,480	108	50	5,400
Grace Howard Mission boarding.....	..	30	3,000	..	30	3,000
Crow Agency, Mont.:						
St. Xavier's boarding	108	85	9,180	108	70	7,560
Mont. Industl. boarding.....	108	50	5,400	..	..	..
Devil's Lake Agy., N. Dak.:						
St. Mary's boarding, Turtle Mountain ..	108	130	14,040	108	130	14,040
Ft. Belknap Agency, Mont.:						
St. Paul's boarding..	108	135	14,580	108	180	11,880
Graceville boarding, Minn.....	108	50	5,400	108	50	5,400
Green Bay Agency, Wis.:						
St. Joseph's boarding	108	130	14,040	108	105	11,340
Greenville boarding, Cal.	108	40	4,320	..	..	..
Halsted boarding, Kans.	125	30	3,750	125	25	3,125
Harbor Springs boarding, Mich.....	108	95	10,260	108	95	10,260
La Pointe Agency, Wis.:						
Bayfield boarding ...	125	30	3,750	108	30	3,240
Bayfield day.....	30	30	900	30	30	900
St. Mary's boarding..	108	50	5,400	108	50	5,400
Bad River, day.....	30	40	1,200	30	15	450
Lac Court d'Oreilles, day.....	30	40	1,200	30	40	1,200
Red Cliff day.....	30	30	900	30	30	900
Carried forward...			$135,780			$111,635

Location of school.	1895. Rate per capita per annum.	1895. Number allowed.	1895. Amount required.	1896. Rate per capita per annum.	1896. Number allowed.	1896. Amount required.
Brought forward..			$135,780			$111,635
Morris boarding, Minn.	$108	80	8,640	$108	65	7,020
North Yakima boarding, Washington..	108	35	3,780	108	35	3,780
Osage Agency, Okla.:						
Pawhuska boarding..	125	50	6,250	108	50	6,250
St. John's boarding, Hominy Creek....	125	40	5,000	125	14	5,000
Pine Ridge Agency, S. Dak:						
Holy Rosary boarding.....	108	140	15,120	108	140	15,120
Plum Creek boarding, Leslie, S. Dak.....	108	15	1,620	..	..	..
Point Iroquois day, Bay Mills, Mich...	30	20	600	30	20	600
Pueblo Agency, N. Mex:						
Acoma day.....	30	25	750	30	25	750
Isleta day.....	30	30	900	30	30	900
Laguna day.....	30	25	750	30	25	750
Jemez day.....	30	35	1,050	30	35	1,050
San Juan day.....	30	22	660	30	22	660
Santa Domingo day.	30	25	750	..	..	..
Taos day.....	30	20	600	30	20	600
Rosebud Agency, S. Dak:						
St. Francis boarding.	108	95	10,260	108	95	10,260
San Diego boarding, Cal.	125	95	11,875	125	95	11,875
Sac & Fox Agency, Okla:						
Sacred Heart boarding.....	108	40	4,320	..	..	..
St. Peter's Mission boarding, Mont....	108	180	19,440	108	145	15,660
Carried forward...			$228,145			$191,910

Location of school.	1895. Rate per capita per annum.	1895. Number allowed.	1895. Amount required.	1896. Rate per capita per annum.	1896. Number allowed.	1896. Amount required.
Brought forward..			$228,145			$191,910
Shoshone Agency, Wyo.:						
St. Stephen's boarding.....	$108	65	7,020	$108	52	5,616
Episcopal Mission, boarding.....	108	20	2,160	108	20	2,160
Tongue River Agency, Mont:						
St. Labre's boarding.	108	40	4,320	108	40	4,320
Tulalip Agency, Wash.:						
Tulalip boarding	108	100	10,800	108	95	10,260
White Earth Agency, Minn:						
St. Benedict's boarding (orphan).....	108	90	9,720	108	90	9,720
Red Lake boarding..	108	40	4,320	108	40	4,320
Hope Boarding, Springfield, S. Dak.....	108	46	4,860	..	..	..
Wittenberg boarding, Wis.....	108	140	15,120	..	..	..
Total.....			$286,465			$228,306

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CONTRACT SCHOOL SYSTEM.

The Indian appropriation act for the current fiscal year contains the following provision in regard to the assistance to be given by the Government to the support of schools for Indians carried on under private control, and known as contract schools:

> And it is hereby declared to be the settled policy of the Government to hereafter make no appropriation

whatever for education in any sectarian school: *Provided*, That the Secretary of the Interior may make contract schools, apportioning as near as may be the amount so contracted for among schools of various denominations, for the education of Indian pupils during the fiscal year eighteen hundred and ninety-seven, but shall only make such contracts at places where non-sectarian schools cannot be provided for such Indian children, and to an amount not exceeding fifty per centum of the amount so used for the fiscal year eighteen hundred and ninety-five.

The question of reducing appropriations to these schools has always been a grave and serious one, and in all cases I have endeavored to make the reductions so that they would best subserve the interests of the Indians and work the least hardship upon those whose allowances were to be lessened. As will readily be understood, this has been a difficult matter, inasmuch as reductions had to be made contrary to the wishes of the contractors. The following general principles were formulated as the best that could be devised to carry out the wishes of Congress and to interfere least with the educational facilities to be afforded Indian children:

1. In general cut down one-half the allowance to contract schools on reservations where the Government also has schools.

2. Reduce rates allowed all contract schools to $108 per pupil per annum.

3. Withdraw aid generally from contract schools off reservations, as the Government has a good supply of nonreservation schools and has to pay for transportation of pupils; moreover, nonreservation contract school plants can be utilized for white children.

4. Regard the provision of the law pertaining to division of aid among denominations by not reducing the number of pupils at the very few contract schools which are non-Catholic.

Following the above plan in general, with some variations according to circumstances, a total cut was made of 50 per cent of the amount allowed contract schools for the fiscal year 1895, excluding the two schools, Hampton and Lincoln, for which Congress made special appropriations.

The reductions are shown in detail in the following table:

TABLE 8.—SCHOOLS CONDUCTED UNDER CONTRACT, WITH NUMBER OF PUPILS CONTRACTED FOR, RATE PER CAPITA, AND TOTAL AMOUNT OF CONTRACT FOR FISCAL YEARS ENDING JUNE 30, 1895, AND JUNE 30, 1897.

	1895.			1897.		
Location of school.	*Rate per capita per annum.*	*Number allowed.*	*Amount required.*	*Rate per capita per annum.*	*Number allowed.*	*Amount required.*
Baraga, Mich. (Chippewa boarding)	$108	45	$4,860	$108	30	$3,240
Bernalillo boarding, N. Mex.	125	60	7,500	125	50	6,250
St. Boniface's boarding, Banning, Cal.	125	100	12,500	125	75	9,375
California:						
Hopland day	30	20	600	30	20	600
St. Turibius boarding	108	30	3,240	108	10	1,080
Ukiah day	30	20	600	..	..	..
Pinole day	30	20	600	30	18	540
Colville Agency, Wash.:						
Colville boarding	108	65	7,020	108	50	5,400
Coeur d'Alene boarding	108	70	7,500	108	60	6,480
Crow Creek Agency, S. Dak:						
Immaculate Conception boarding	108	60	6,480	108	30	3,240
Grace Howard Mission boarding	..	60	3,000	100	35	3,500
Carried forward.			$53,900			$39,705

Location of school.	1895. Rate per capita per annum.	1895. Number allowed.	1895. Amount required.	1897. Rate per capita per annum.	1897. Number allowed.	1897. Amount required.
Brought forward			$53,900			$39,705
Crow Agency, Mont.:						
St. Xavier's boarding	$108	85	9,180	$108	50	5,400
Mont. Indust. Boarding	108	50	5,400	..	..	..
Devils Lake Agency, N. D:						
St. Mary's boarding, Turtle Mountain	108	130	14,040	108	100	10,800
Ft. Belknap Agency, Mont:						
St. Paul's boarding	108	135	14,580	108	70	7,560
Graceville boarding, Minn	108	50	5,400	..	..	..
Green Bay Agency, Wis.:						
St. Joseph's boarding	108	130	14,040	108	65	7,020
Greenville boarding, Cal	108	40	4,320	..	..	..
Halstead boarding, Kans	125	30	3,750	..	..	..
Harbor Springs, Mich	108	95	10,260	108	50	5,400
La Pointe Agency, Wis:						
Bayfield boarding	125	30	3,750	108	30	3,240
Bayfield day	30	30	900	..	..	..
St. Mary's boarding	108	50	5,400	108	50	5,400
Bad River day	30	15	450	30	15	450
Lac Court d'Oreilles day	30	40	1,200	30	40	1,200
Red Cliff day	30	30	900	..	..	..
Morris boarding, Minn	108	80	8,640	..	..	..
North Yakima boarding, Wash	108	35	3,780	..	..	..
Osage Agency, Okla:						
Pawhuska boarding	125	50	6,250	125	50	6,250
St. John's boarding, Hominy Creek	125	40	5,000	125	40	5,000
Carried forward			$171,140			$97,425

Location of school.	1895. Rate per capita per annum.	1895. Number allowed.	1895. Amount required.	1897. Rate per capita per annum.	1897. Number allowed.	1897. Amount required.
Brought forward			$171,140			$97,425
Pine Ridge Agency, S. Dak:						
Holy Rosary boarding	$108	140	15,120	$108	125	13,500
Plum Creek boarding, Leslie, S. Dak.	108	15	1,620	..	..	..
Point Iroquois day, Bay Mills, Mich	30	20	600	30	20	600
Pueblo Agency, N. Mex:						
Acoma day	30	25	750	..	..	..
Isleta day	30	30	900	..	..	..
Laguna day	30	25	750	..	..	..
James day	30	35	1,050	..	..	..
San Juan day	30	22	660	..	..	..
Santo Domingo day	30	25	750	..	..	..
Taos day	30	20	600	..	..	..
Rosebud Agency, S. Dak.:						
St. Francis boarding	108	95	10,260	108	90	9,720
San Diego boarding, Cal.	125	95	11,875	125	75	9,375
Sac & Fox Agency, Okla:						
Sacred Heart boarding	108	40	4,320	..	..	..
St. Peter's boarding, Mont	108	189	19,440	..	..	..
Shoshone Agency, Wyo.:						
St. Stephen's boarding	108	65	7,020	108	50	5,400
Shoshone Mission bdg	108	20	2,160	108	20	2,160
Tongue River Agency, Mont.:						
St. Labre's boarding	108	40	4,320	108	40	4,320
Tulalip Agency, Wash.:						
Tulalip boarding	108	100	10,800	108	75	8,100
Carried forward			$264,135			$150,600

Location of school.	1895. Rate per capita per annum.	1895. Number allowed.	1895. Amount required.	1897. Rate per capita per annum.	1897. Number allowed.	1897. Amount required.
Brought forward			$264,135			$150,600
White Earth Agency, Minn.:						
St. Benedict's boarding (orphan)	$108	90	9,720	$108	75	8,100
Red Lake boarding	108	40	4,320	108	40	4,320
Hope boarding, Springfield, S. Dak	108	45	4,860	..	..	..
Wittenberg boarding, Wis.	108	140	15,120	..	..	..
Blackfeet Agency, Mont.:						
Holy Family boarding	125	100	12,500	108	50	5,400
Clontarf boarding, Minn	150	100	15,000	108	46	4,968
Flathead Agency, Mont., St. Ignatius boarding	150	300	45,000	125	220	27,500
Rensselaer boarding, Ind.	..	60	8,330	..	..	..
St. Benedict's boarding, St. Joseph, Minn.	150	50	7,500	..	..	..
St. John's boarding, Collegeville, Minn.	150	50	7,500	..	..	..
Kate Drexel Industrial boarding, Oregon	100	60	6,000	100	36	3,600
White's Indiana Manual Labor Inst., Wabash, Ind.	167	60	10,020	..	..	..
Total			$410,005			$204,488
Hampton Institute, Va.*	167	120	20,040	167	120	20,040
Lincoln Institution, Philadelphia, Pa.	167	200	33,400	167	200	33,400
Total			$463,445			$257,928

*Specially appropriated for by Congress.

Contracts have been entered into with the various schools for the amounts indicated in the above table.

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CONTRACT SCHOOLS.

The system of giving governmental aid to schools carried on among the Indians by private parties goes back almost to the beginning of Indian education. In 1819 $10,000 was appropriated by Congress for Indian education, and a circular was issued by the War Department September 3, 1819, which contains the following:

> Such associations or individuals who are already actually engaged in educating the Indians, and who may desire the cooperation of the Government, will report to the Department of War. . . . In proportion to the means of the Government cooperation will be extended to such institutions as may be approved, as well in erecting their necessary buildings as in their current expenses.

In 1820 twenty-one schools carried on by different religious societies were aided by the Government to the extent of $11,838, about one-sixth of the amount expended by the societies themselves for these schools. In fact, in the earlier years there were very few schools among the Indians which were not conducted under the auspices of some religious society. It was not until 1870, when Congress made an appropriation of $100,000 "for the support of industrial and other schools among the Indian tribes not otherwise provided for," that the Government undertook with earnestness to provide Indian tribes with schools, although considerable Government money had been expended on Indian education from treaty funds and from what was known as the "civilization fund."

For a long time different schools carried on under private auspices were aided by the Government without any formal contract. Formal contracts began to be made in the latter part of 1870. At one time they were made largely on account of a law limiting the amount which might be expended at an Indian agency for employees. Unless school employees could be excepted from this restriction it was found that it would be impracticable to keep up both school and agency work at the larger agencies. By contracting with a society to carry on a school the employees of that school were thereby eliminated from the list of agency employees. Afterwards the law was amended so as to exclude school employees and there was no longer any occasion on that score for making school contracts. Sometimes when no contract was necessary and Government aid could just as well be extended to the school without one, and perhaps had been so extended for years, it came to be considered more desirable by the office or by the society to put the terms of the agreement between them into the form of a contract. It also facilitated in some respects the settlement of accounts in the Treasury.

For a while, when other schools were carried on under contract, "schools specially appropriated for" were considered as not needing any contract arrangement in their behalf. But finally it became the custom to render through the medium of a contract all Government aid to Indian schools carried on by private parties. Hence schools so aided became known as contract schools; and thus there grew up "the contract system," which gradually increased until, during the fiscal year ended June 30, 1892, contracts were made with various denominations and individuals to the amount of $611,570. Since that year there has been a gradual reduction, either by withdrawal of the parties themselves from contracts or by action of this office under the direction of Congress.

There were in operation last year thirty-seven contract schools (two of them receiving special appropriations), for

which $257,928 was allowed. The Indian appropriation act for the current fiscal year contains the following provision in regard to the assistance to be given by the Government in the support of the schools for Indians carried on under private control:

> And it is hereby declared to be the settled policy of the Government to hereafter make no appropriation whatever for education in any sectarian school: Provided, That the Secretary of the Interior may make contracts with contract schools, apportioning as near as may be the amount so contracted for among schools of various denominations, for the education of Indian pupils during the fiscal year eighteen hundred and ninety-eight, but shall only make such contracts at places where non-sectarian schools cannot be provided for such Indian children, and to an amount not exceeding forty per centum of the amount so used for the fiscal year eighteen hundred and ninety-five.

For the fiscal year 1895 there was used for all contract schools the sum of $463,505, of which amount $53,440 was appropriated for two schools specifically named by Congress, which left a total of $410,065 as the true amount from which the 40 per cent. should be taken. This included the amount allowed for two schools on the Osage Reservation, $11,250, which was paid out of Osage trust money. In the opinion of this office, concurred in by the Department, this sum should not have been included in the amount set apart for contract schools, since it had been paid from and charged against the special treaty funds of the Osages. This sum deducted from the above total left a new one for 1895 of $398,815, of which 40 per cent. under the above section of the appropriation act could be used for the fiscal year 1898, making the sum of $159,526 available for sectarian schools. There are only two Protestant contract schools, Bay Mills in Michigan, $600, and John Roberts, Shoshone Agency, Wyo., $2,160, a total

of $2,760, which deducted from the $159,526 leaves $156,766 as the amount available for distribution among Catholic schools for the fiscal year 1898.

In the fiscal year 1897 certain schools were allowed $125 per capita. At all of these schools the rates for the current fiscal year have been reduced to $108 per capita, and the Catholic mission school on the Crow Creek Reservation has been omitted because the Government has ample accommodations for all pupils of school age on that reservation.

For the current fiscal year contracts have been made with the different schools for the number of pupils and at the rate given in the table below. It has been deemed best to reduce the various schools each a small amount rather than to cut out any other school than the Crow Creek school. Regarding the provision of law pertaining to apportioning aid among the various denominations, no reductions were made in the Bay Mills or the John Roberts school.

TABLE 8.—SCHOOLS CONDUCTED UNDER CONTRACT, WITH NUMBER OF PUPILS CONTRACTED FOR, RATE PER CAPITA, AND TOTAL AMOUNT OF CONTRACT FOR FISCAL YEARS ENDING JUNE 30, 1895, AND JUNE 30, 1898.

	1895.			1898.		
Name and location of school.	*Number allowed.*	*Rate.*	*Amount.*	*Number allowed.*	*Rate.*	*Amount.*
Banning, California	100	$125	$12,500	70	$108	$7,560
Baraga, Michigan	45	108	4,860	25	108	2,700
Blackfeet, Mont.	100	125	12,500	45	108	4,860
Bayfield, Wisconsin	30	125	3,750	25	108	2,700
Bernalillo, N. Mexico	60	125	7,500	45	108	4,860
Colville, Wash.	65	108	7,020	45	108	4,860
Coeur d'Alene, Idaho	70	108	7,560	55	108	5,940
Crow Creek, S. Dak.	60	108	6,480	..	..	..
Crow, Montana	85	108	9,180	45	108	4,860
Devils Lake, N. Dak.	130	108	14,040	95	108	10,260
Flathead, Montana	300	150	45,000	215	108	23,220
Carried forward			$130,390			$71,820

Name and location of school.	1893. Number allowed.	Rate.	Amount.	1898. Number allowed.	Rate.	Amount.
Brought forward			$130,390			$71,820
Fort Belknap, Montana	135	$108	14,580	65	$108	7,020
Harbor Springs, Mich	95	108	10,260	45	108	4,860
Odanah, Wis., boarding	50	108	5,400	45	108	4,860
Odanah, Wis., day	15	30	450	10	30	300
Lac Court d'Oreilles Wisconsin, day	40	30	1,200	33	30	990
Osage, Okla., St. Louis	50	125	6,250	..	..	..
Osage, Okla., St. John's	40	125	5,000	..	..	..
Pine Ridge, S. Dak.	140	108	15,120	115	108	12,420
Rosebud, S. Dak.	95	108	10,260	81	108	8,748
San Diego, Calif.	95	125	11,875	67	108	7,236
Shoshone, Wyom.	65	108	7,020	45	108	4,860
Tongue River, Mont.	40	108	4,320	35	108	3,780
Tulalip, Wash.	100	108	10,800	67	108	7,236
White Earth, Minn., St. Benedict	90	108	9,720	70	108	7,560
White Earth, Minn., Red Lake	40	108	4,320	35	108	3,780
Pinola Day, Calif.	20	30	600	13	30	390
Hopland Day, Calif.	20	30	600	15	30	450
St. Turibius, Calif.	30	108	3,240	8	108	864
Green Bay, Wisconsin	130	108	14,040	60	108	6,480
Kate Drexel, Oregon	60	100	6,000	31	100	3,100
Point Iroquois Day, Michigan	20	30	600	20	30	600
Shoshone Mission, Wyoing	20	108	2,160	20	108	2,160
Total	2,435		$274,205	1,545		$159,514
Hampton Institute, Virginia*	120	167	20,040	120	167	20,040
Lincoln Institution, Philadelphia*	200	167	33,400	200	167	33,400
Grand Total	2,755		$327,645	1,865		$212,954

*Specially appropriated by Congress.

It will appear from the above table that contracts are now made with thirty-two schools. There was during the fiscal year 1897 an enrollment of 3,158, and an average attendance of 2,785 pupils, a decrease, respectively, of 1,281 and 1,012 from the preceding year.

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CONTRACT SCHOOLS.

It is provided in the appropriation act for the fiscal year ending June 30, 1899—

> that the Secretary of the Interior may make contracts with contract schools, apportioning as near as may be the amount so contracted for among the schools of various denominations, for the education of Indian pupils during the fiscal year 1899, but shall only make such contracts at places where nonsectarian schools cannot be provided for such Indian children to an amount not exceeding 30 per cent. of the amount so used for the fiscal year 1895.

For the fiscal year 1895 there was used for contract schools of all denominations the sum of $463,505, of which amount $53,440 was appropriated for schools specifically named by Congress, which leaves a total of $410,065 as the true amount from which the 30 per cent. should be taken. The amount allowed for the two schools at the Osage Reservation ($11,250), being paid out of Osage trust money, should not, in the opinion of this office, be included in the amount set apart for contract schools, and therefore, upon your approval, that sum has been deducted from the above total, which would leave a new total for 1895 of $298,815, of which sum I am of opinion Congress intended only 30 per cent. to be used for 1899, thus making the sum of $119,644.50 available for such purpose.

When the schedule for the fiscal year 1898 was prepared, there were two Protestant schools—the Bay Mills, Mich.,

$600, and the John Roberts, Shoshone Agency, Wyo., $2,160, a total of $2,760. However, during the past year the school at Bay Mills, Mich., has been discontinued, and no contract was made therefor, which leaves only one Protestant contract school in existence. In order to arrive at the amount which, in the judgment of this office, should be set aside to the Catholic contract schools, I deducted the $2,760 from the total amount of $119,644.50, which leaves $116,884.50 for distribution to the various Catholic schools.

It will appear from an inspection of the schedule that the schools have been reduced ratably, rather than to eliminate any particular institution. The reason for this is that the average attendance at nearly all of such schools shows an excess over that contracted for, the number allowed being 1,763 pupils, while the average attendance during the past year was 2,313, indicating that, although reductions have been made in the number allowed, the schools have continued in their particular work.

Contracts have been executed with the different schools for the number of pupils and at the rate and for the amount given in the schedule as follows:

TABLE 7.—SCHOOLS CONDUCTED UNDER CONTRACT, WITH NUMBER OF PUPILS CONTRACTED FOR, RATE PER CAPITA, AND TOTAL AMOUNT OF CONTRACT FOR FISCAL YEARS ENDING JUNE 30, 1895, AND JUNE 30, 1899.

	1895.			1899.		
Name and location of school.	*Number allowed.*	*Rate.*	*Amount.*	*Number allowed.*	*Rate.*	*Amount.*
Banning, California..	100	$125	$12,500	52	$108	$5,616
Baraga, Mich	45	108	4,860	19	108	2,052
Blackfeet, Montana..	100	125	12,500	34	108	3,672
Bayfield, Wisconsin .	30	125	3,750	19	108	2,052
Bernalillo, N. Mex. ..	60	125	7,500	34	108	3,672
Colville, Wash.....	65	108	7,020	34	108	3,672
Carried forward.			$48,130			$20,736

Name and location of school.	1895. *Number allowed.*	1895. *Rate.*	1895. *Amount.*	1899. *Number allowed.*	1899. *Rate.*	1899. *Amount.*
Brought forward			$48,130			$20,736
Coeur d'Alene, Idaho	70	$108	7,560	41	$108	4,428
Crow Creek, So. Dak.	60	108	6,480	..	..	..
Crow, Montana.....	85	108	9,180	34	108	3,672
Devils Lake, N Dak..	130	108	14,040	72	108	7,776
Flathead, Montana ..	300	150	45,000	161	108	17,388
Fort Belknap, Mont..	135	108	14,580	49	108	5,292
Harbor Springs, Mich	95	108	10,260	34	108	3,672
Odanah, Wis., boardg.	30	108	5,400	34	108	3,672
Odanah, Wis., day..	15	30	450	..	..	..
Lac Court d'Oreilles, Wisconsin, day .	40	30	1,200	..	..	..
Osage, Okla., St. Louis	50	125	6,250	..	..	..
Osage, Okla., St. John's.....	40	125	5,000	..	..	..
Pine Ridge, S. Dak...	140	108	15,120	86	108	9,288
Rosebud, S. Dak.....	95	108	10,260	61	108	6,588
San Diego, Cal.....	95	108	11,875	51	108	5,508
Shoshone, Wyoming.	65	108	7,020	34	108	3,672
Tongue River, Mont.	40	108	4,320	26	108	2,808
Tulalip, Wash.....	100	108	10,800	50	108	5,400
White Earth, Minn., St. Benedict	90	108	9,720	51	108	5,508
White Earth, Minn., Red Lake	40	108	4,320	27	108	2,916
Pinole, Calif.....	20	30	600	10	30	300
Hopland, day, Cal. ..	20	30	600	11	30	330
St. Turibius, Cal.....	30	108	3,240	6	108	648
Green Bay, Wis.	130	108	14,040	45	108	4,860
Kate Drexel, Oregon.	60	108	6,000	24	100	2,400
Bay Mills, Mich.....	20	30	600	..	..	..
Shoshone Mission, Wyoming	20	108	2,160	20	108	2,160
Total.....	2,435		$274,205	1,119		$119,022
Carried forward.			$274,205			$119,022

Name and location of school.	1895. Number allowed.	Rate.	Amount.	1899. Number allowed.	Rate.	Amount.
Brought forward			$274,205			$119,022
Hampton Institute, Virginia*.....	120	$167	20,040	120	$167	20,040
Lincoln Institution, Philadelphia*...	200	167	33,400	200	167	33,400
Grand total† ...	2,755		$327,645	1,439		$162,462

For the reasons set forth in my last annual report, a contract with the St. Louis Boarding School, on the Osage Reservation, for 75 pupils at $125 per capita, amounting to $9,375, and also a contract with the St. John's Boarding School, on the same reservation, for 65 pupils at $125 per capita, amounting to $8,125—a total of $17,500—were executed, and payable out of the Osage trust funds.

During the past fiscal year contracts, payable out of the educational fund of the Pottawatomies, have been made with the Sacred Heart Boys' School and the St. Mary's Academy for girls, on the Sac and Fox Reservation, Okla., for 35 boys and 52 girls, respectively, at $144 each per capita per annum. As this fund is nearly exhausted, I have, with your approval, renewed the contract only with St. Mary's Academy for 45 pupils at $125 per capita, which will amount to $5,625. The determination, therefore, of this contract will absorb all of the available portion of this fund. As only one school can be maintained, I have deemed it best that all the money should be used for the benefit of the girls.

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* Specially appropriated for by Congress.

† Not including the two schools of Osage and two Pottawatomie schools at Sac and Fox Agencies, Ia., nor one day school at La Pointe Agency, which was converted into a Government school during the year.

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CONTRACT SCHOOLS.

The Indian appropriation act for the fiscal year ended June 30, 1899, contains this provision:

> That the Secretary of the Interior may make contracts with contract schools, apportioning as near as may be the amount so contracted for among schools of various denominations, for the education of Indian pupils during the fiscal year nineteen hundred, but shall only make such contracts at places where nonsectarian schools can not be provided for such Indian children, and to an amount not exceeding fifteen per centum of the amount so used for the fiscal year eighteen hundred and ninety-five, the same to be divided proportionately among the said contract schools, this being the final appropriation for sectarian schools.

The sum of $463,505 was the amount used for contract schools of all denominations for the fiscal year 1895, of which amount $53,440 were appropriated for Hampton and Lincoln institutions specifically by Congress, which left a total of $410,065 as the true amount from which the 15 per centum should be taken. There were two schools, however, at the Osage Reservation paid out of Osage trust money, and the amount so used for these schools has been deducted from the above total, which leaves a new total for 1895 of $398,815, of which sum it is proposed to use during the fiscal year 1900 15 per centum, making the sum of $59,822.25 available for such purposes. This amount has been divided as follows: For the only Protestant schools now under contract $2,160, leaving amount for the Catholic schools of $57,642.

In view of the fact that the average attendance at these schools was in excess of the contract number, it was deemed best to reduce them ratably rather than to eliminate any par-

ticular institution. They have carried 2,188 pupils on the contract number of 749 for which they are paid by the Government.

The following table gives a list of the contracts executed with the different schools for the number of pupils at the rate and amount allowed:

TABLE NO. 6.—SCHOOLS CONDUCTED UNDER CONTRACT, WITH NUMBER OF PUPILS CONTRACTED FOR, RATE PER CAPITA, AND TOTAL AMOUNT OF CONTRACT FOR FISCAL YEARS ENDING JUNE 30, 1895, AND JUNE 30, 1900.

Name and location of school.	1895.			1900.		
	Number allowed.	*Rate.*	*Amount.*	*Number allowed.*	*Rate.*	*Amount.*
Banning, California..	100	$125	$12,500	26	$108	$2,808
Baraga, Michigan....	45	108	4,860	10	108	1,080
Blackfeet, Montana.	100	125	12,500	17	108	1,836
Bayfield, Wisconsin .	30	125	3,750	10	108	1,080
Barnalillo, N. Mex...	60	125	7,500	17	108	1,836
Colville, Wash.....	65	108	7,020	17	108	1,836
Coeur d'Alene, Idaho	70	108	7,560	20	108	2,160
Crow Creek, S. Dak. .	60	108	6,480	..	..	..
Crow, Montana.....	85	108	9,180	17	108	1,836
Devils Lake, N. Dak.	130	108	14,040	35	108	3,780
Flathead, Montana ..	300	150	45,000	80	108	8,640
Fort Belknap, Mont..	135	108	14,580	24	108	2,592
Harbor Springs, Mich	95	108	10,260	17	108	1,836
Odanah, Wis., boardg.	50	108	5,400	17	108	1,836
Odanah, Wis., day...	15	30	450	..	..	..
Lac Court d'Oreilles, Wisconsin, day..	40	30	1,200	..	..	..
Osage, Okla., St. Louis.....	50	125	6,250	..	..	..
Osage, Okla., St. John's.....	40	125	5,000	..	..	..
Carried forward.			$173,530			$33,156

Name and location of school.	1895. Number allowed.	1895. Rate.	1895. Amount.	1900. Number allowed.	1900. Rate.	1900. Amount.
Brought forward			$173,530			$33,156
Pine Ridge, So. Dak..	140	$108	15,120	40	$108	4,320
Rosebud, So. Dak ...	95	108	10,200	30	108	3,240
Dan Diego, Calif.....	95	125	11,875	25	108	2,700
Shoshone, Wyoming.	65	108	7,020	17	108	1,836
Tongue River, Mont..	40	108	4,320	13	108	1,404
Tulalip, Washington.	100	108	10,800	24	108	2,592
White Earth, Minn., St. Benedict's...	90	108	9,720	24	108	2,592
White Earth, Minn., Red Lake	40	108	4,320	13	108	1,404
Pinole, Calif.....	20	30	600	6	30	180
Hopland, Calif., day.	20	30	600	7	30	210
St. Turibius, Calif. ..	30	108	3,240	5	108	540
Green Bay, Wis.....	130	108	14,040	21	108	2,268
Kate Drexel, Oregon.	60	100	6,000	1	100	1,200
Bay Mills, Michigan	20	30	600	..	..	..
Shoshone Mission, Wyoming,.....	20	108	2,160	20	108	2,160
Total.....	2,435		$274,145	564		$59,802
Hampton Institute, Virginia*.....	120	167	20,040	120	167	20,040
Lincoln Institute, Philadelphia,*..	200	167	33,400	200	167	33,400
Grand Total†...	2,755		$327,585	884		$113,242

In the above schedule schools are not included that were dropped from the contract list since 1895, amounting to the sum of $135,860, the difference between totals in "Amount" columns of tables Nos. 6 and 8.

* Specially appropriated for by Congress.

† Not including the two schools of Osage and one Pottawatomie school at Sac and Fox Agency, Oklahoma.

For the reasons set forth in the Annual Report for 1897 a contract with the St. Louis boarding school, on the Osage Reservation, for 75 pupils at $125 per capita, amounting to $9,375, and also a contract with the St. John's boarding school, on the same reservation, for 65 pupils at $125 per capita, amounting to $8,125—a total of $17,500—were executed, and payable out of the Osage trust funds. It appearing that after paying all demands against the educational fund of the Pottawatomies for the present year there remained a surplus which could be utilized, therefore a contract has been executed with the St. Mary's Academy for girls, on the Pottawatomie Reservation, Okla., for 27 pupils at $125 per annum per capita, amounting to $3,375. This will practically exhaust this fund.

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CONTRACT SCHOOLS.

The following section of the act making appropriations for the Indian service for the fiscal year ending June 30, 1900, provided:—

> That the Secretary of the Interior may make contracts with contract schools, apportioning as near as may be the amount so contracted for among schools of various denominations, for the education of Indian pupils during the fiscal year nineteen hundred, but shall only make such contracts at places where nonsectarian schools cannot be provided for Indian children, and to an amount not exceeding fifteen per centum of the amount so used for the fiscal year eighteen hundred and ninety-five, the same to be divided proportionately among the said several contract schools, this being the final appropriation for sectarian schools—

Under this section contracts were made with the several contract schools in accordance with the following schedule:

TABLE NO. 12.—SCHOOLS CONDUCTED UNDER CONTRACT, WITH NUMBER OF PUPILS CONTRACTED FOR, RATE PER CAPITA, AND TOTAL AMOUNT OF CONTRACT FOR FISCAL YEARS ENDING JUNE 30, 1895, AND JUNE 30, 1900.

Name and location of school.	1895.			1900.		
	Number.	*Rate.*	*Amount.*	*Number.*	*Rate.*	*Amount.*
Banning, Cal.....	100	$125	$12,500	26	$108	$2,808
Baraga, Michigan....	45	108	4,860	10	108	1,080
Blackfeet, Montana..	100	125	12,500	17	108	1,836
Bayfield, Wis.....	30	125	3,750	10	108	1,080
Bernalillo, N. Mex...	60	125	7,500	17	108	1,836
Colville, Wash.....	65	108	7,020	17	108	1,836
Coeur d'Alene, Idaho	70	108	7,560	20	108	2,160
Crow, Montana.....	85	108	9,180	17	108	1,836
Devils Lake, N. Dak.	130	108	14,040	35	108	3,780
Flathead, Montana ..	300	150	45,000	80	108	8,640
Fort Belknap, Mont..	135	108	14,580	24	108	2,592
Harbor Springs, Mich	95	108	10,260	17	108	1,836
Odanah, Wis., boardg.	50	108	5,400	17	108	1,836
Pine Ridge, S. Dak...	140	108	15,120	40	108	4,320
Rosebud, S. Dak.....	95	108	10,260	30	108	3,240
San Diego, Cal.....	95	125	11,875	25	108	2,700
Shoshoni, Wyom.....	65	108	7,020	17	108	1,836
Tongue River, Mont.	40	108	7,020	17	108	1,404
Tulalip, Wash.....	100	108	10,800	24	108	2,592
White Earth, Minn., St. Benedict's...	90	108	9,720	24	108	2,392
White Earth, Minn., Red Lake.....	40	108	4,320	13	108	1,404
Pinole, Cal.....	20	30	600	6	30	180
Hopland, Cal., day..	20	30	500	7	30	210
St. Turibius, Cal.....	30	108	3,240	5	108	540
Green Bay, Wis.....	130	108	14,040	21	108	2,268
Kate Drexel, Oregon.	60	100	6,000	12	100	1,200
Carried forward.			$254,665			$57,442

Name and location of school.	1895. *Number.*	*Rate.*	*Amount.*	1900. *Number.*	*Rate.*	*Amount.*
Brought forward			$254,665			$57,442
Shoshoni, Mission, Wyoming	20	$108	2,160	20	$108	2,160
Schools dropped from contract lists since 1895	..	..	155,840	..	..	..
Total	2,435		$412,665	2,564		$59,502
Hampton Inst. Va.*	120	167	20,040	150	167	20,040
Lincoln Institution, Phila., Pa.*	200	167	33,400	200	167	33,400
Grand total†	2,755		$466,105	884		$112,942

For the reasons set forth in the Annual Report of this office for 1897, contracts, payable out of the Osage trust funds, were made with St. Louis boarding school for 75 pupils, at $125 per capita, amounting to $9,375, and with St. John's boarding school for 65 pupils, at $125 per capita, amounting to $8,125, a total of $17,500 for these schools located on the Osage Reservation, Okla. A contract was also entered into with St. Mary's Academy for girls, on the Sauk and Fox reservation, Okla., for 27 pupils, at $125 per capita, amounting to $3,375. This amount was payable out of the educational funds of the Potawatomi and, as was stated in the last annual report, exhausts that fund.

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The history of governmental aid to schools conducted by other parties goes back to the beginning of the present cen-

* Specially appropriated by Congress.

† Not including the two schools of Osage and one school at Sac and Fox Agency

tury. Under the provisions of the act of 1819 $10,000 were appropriated for the purpose of extending financial help to "such associations or individuals who are already engaged in educating the Indians" as may be approved by the War Department. In 1820 twenty-one schools conducted by different religious societies were given $11,838, and from that date until the appropriation of $100,000 in 1870 the principal educational work in relation to the Indians was under the auspices of these bodies, aided more or less by the Government. The contract system was a natural sequence of the efforts to systemize this work and harmonize it under existing laws and regulations.

The growth of the system has been gradual since its inception and reached the maximum amount during the fiscal year ended June 30, 1892, when the contracts amounted to $611,570, more than one-fourth of the amount appropriated for regular Government schools. Since that time nearly all religious bodies have discontinued the acceptance of governmental aid. These discontinuances were either voluntary or by action of the Indian department under various Congressional requirements. About this time the agitation of the contract or sectarian school question was begun, and deferring to the sentiment that religious bodies should discontinue the use of Government funds in their educational work among the Indians, steps were taken for a gradual reduction in the amounts to be allowed. There were doubtless equities involved in the matter, and it was thought that as much hardship as possible should be avoided in the final abandonment of this plan.

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In the act making appropriations for the ensuing fiscal year 1901 no authority is given to make these contracts. Only one exception is made, and that is a specific appropriation "For support and education of one hundred and twenty Indian pupils at the school at Hampton, Virginia." This

is a magnificently equipped industrial school, and for this and the additional reason that it is not considered a sectarian school, it is presumed that Congress continued its appropriation.

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MISSION SCHOOLS.

Mission schools are a growing class of schools whose work is of great benefit not only to the children but to the adult Indians. They are operated and conducted by various religious bodies, both Protestant and Catholic, and also by philanthropic associations. Teachers, employees, food, clothing, and buildings are provided by the conductors of these schools. The Government only assuming supervisory care over them, they are visited by inspecting officials of this office and the Department for the purpose of observing the care and attention bestowed upon the pupils, their progress, health, and general condition. Agents and other Government officials are directed to "lend a helping hand," and assist the missionary efforts of the employees in securing a legitimate attendance. On those reservations where food and clothing are issued to the adult Indians, the agent furnishes such proportion of the rations and clothing to the school as he would give to the parents were the children at home. When no rations are issued, or the school is not on the Indian reservation, the entire expense of maintaining the school is borne by the association or church under whose control it is conducted.

Connected with many of these schools are small mission churches, which have a wide influence for good on the community. Children in the Government schools are advised and urged to attend the church of their choice.

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MISSION SCHOOLS.

These institutions are maintained on or near Indian reservations by the different religious bodies and missionary associations of the United States. They are owned and controlled by their conductors, the Government merely exercising supervisory direction to see that Indian pupils enrolled there are properly educated and cared for. They are valuable assistants in the general scheme of Indian civilization. As a rule they are sectarian in their teachings, and are conducted in conjunction with mission churches. The Department readily assists these schools in every way possible. At those reservations where rations are issued, the agents were permitted to give those to which the child would be entitled if at home with its parents, to the school at which the child was enrolled, deducting the same from the amount issued the parents. This permission has been revoked as unlawful.

Congress having failed to provide in the appropriation act for the fiscal year 1901 for the continuance of the contract-school system, those schools did not receive Government aid during the year. All were continued, however, as mission schools, and therefore are now classed (except Hampton Institute, for which Congress made a specific appropriation) under the general head of "mission schools." With this explanation the decrease in the contract schools, as shown in table No. 8, page [illegible] is readily understood.

There were enrolled in the mission boarding schools 3,531 pupils, with an average attendance of 3,120; day-school enrollment 272, average attendance 205; making, respectively, increases, at the boarding schools of 2,469 enrolled, 2,174 in attendance, and at day schools 59 enrolled and 12 in average attendance. It is believed that the enrollment in these schools is greater than stated above, for the reason that there is a disinclination on the part of some of the mission schools to furnish statistics promptly and regularly.

The location, denomination, and other information relative to mission schools will be found in the following table:

TABLE NO. 7.—LOCATION, CAPACITY, ENROLLMENT, AND AVERAGE ATTENDANCE OF MISSION SCHOOLS DURING FISCAL YEAR ENDED JUNE 30, 1901.

BOARDING SCHOOLS.

Location of school.	*Supported by:*	*Capacity.*	*Enrollment.*	*Average attendance.*
ARIZONA.				
Tucson	Presbyterian Church	170	168	158
CALIFORNIA.				
Banning	Catholic Church	150	139	125
San Diego	" "	150	82	81
Kelseyville (St. Turibius)	Catholic Church	20	13	10
IDAHO.				
Coeur d'Alene Reservation:				
De Smet Mission	Catholic Church	150	93	83
MICHIGAN.				
Baraga	Catholic Church	140	27	24
Harbor Springs	" "	126	85	82
MINNESOTA.				
White Earth Agency:				
St. Benedict's	Catholic Church	150	95	88
Leech Lake Agency:				
Red Lake Reservation, St. Mary's	Catholic Church	100	76	65
Carried forward.		1156	778	716

BOARDING SCHOOLS—(*Continued*).

Location of school.	*Supported by:*	*Capacity.*	*Enrollment.*	*Average attendance.*
Brought forward		1156	778	716
MONTANA.				
Blackfeet	Catholic Church	150	78	69
Crow	" "	150	56	50
Flathead	" "	250	105	143
Fort Belknap	" "	250	105	82
Fort Peck Agency, Wolf Point	Presbyterian Church	30	29	22
Tongue River	Catholic Church	65	66	53
NEBRASKA.				
Santee Agency:				
Santee Normal (training)	Congregational Ch.	125	98	81
NEW MEXICO.				
Bernalillo	Catholic Church	125	79	73
NORTH DAKOTA.				
Fort Berthold Agency:				
Mission Home	Congregational Ch.	46	34	28
Devils Lake Agency:				
St. Mary's (Turtle Mountain)	Catholic Church	150	141	110
Standing Rock Agency:				
St. Elizabeth's	Episcopal Church	60	66	58
OKLAHOMA.				
Cheyenne and Arapaho Agency:				
Cantonment	Mennonite Church	60	29	26
Kiowa Agency:				
St. Patrick's	Catholic Church	125	85	77
Mary Gregory Memorial	Presbyterian Church	60	30	22
Carried forward		2802	1779	1610

BOARDING SCHOOLS—(*Continued*).

Location of school.	*Supported by:*	*Capacity.*	*Enrollment.*	*Average attendance.*
Brought forward		2802	1779	1610
OKLAHOMA (*Continued*)				
Cache Creek	Reform Presbyterian Church	50	51	48
Methvin	Methodist Ch. South	100	74	64
Osage Agency: St. Louis	Catholic Church	125	68	65
St. John's	" "	150	46	44
Sac and Fox Agency: Sacred Heart, St. Mary's Academy	Catholic Church	54	49	35
Sacred Heart, St. Benedict's	Catholic Church	40	27	22
OREGON.				
Umatilla Agency: Kate Drexel's	Catholic Church	130	69	54
SOUTH DAKOTA.				
Crow Creek	Catholic Church	75	58	54
Cheyenne River Agency: St. John's	Episcopal Church	60	60	54
Plum Creek	Society for Propagation of the Gospel.	10	10	9
Oahe	Congregational Ch.	50	32	30
Pine Ridge	Catholic Church	160	156	149
Rosebud Agency: St. Francis	Catholic Church	230	213	206
St. Mary's	Episcopal Church	50	55	50
Goodwill Mission	Presbyterian Ch.	100	66	54
Yankton Agency: St. Paul's	Episcopal Church	50	49	43
Carried forward		4236	2862	2591

BOARDING SCHOOLS—(*Continued*).

Location of school.	*Supported by:*	*Capacity.*	*Enrollment.*	*Average attendance.*
Brought forward		4236	2862	2591
WASHINGTON.				
Colville Mission	Catholic Church	150	66	56
Puyallup Reservation:				
St. George's	Catholic Church	90	85	64
Tulalip	" "	150	93	80
WISCONSIN.				
Green Bay	Catholic Church	170	153	125
La Pointe Agency: Bayfield	Catholic Church	50	32	31
Odanah, St. Mary's	" "	80	85	81
WYOMING.				
Shoshoni Agency:				
St. Stephen's	Catholic Church	125	76	68
Shoshoni Mission	Episcopal Church	20	21	14
Total		5071	3473	3110

DAY SCHOOLS

ARIZONA.				
Pima Agency:				
San Xavier	Catholic Church	125	100	84
St. John's Mission	" "	100	83	53
CALIFORNIA.				
Pinole	Catholic Church	40	16	12
Ukiah	" "	30	11	8
Kelseyville (St. Turibius)*	Catholic Church	..	7	5
Carried forward		295	217	162

* Attend St. Turibius Boarding School.

DAY SCHOOLS—(*Continued*).

Location of school.	*Supported by:*	*Capacity.*	*Enrollment.*	*Average attendance.*
Brought forward		295	217	162
MONTANA.				
Fort Peck Agency:				
Wolf Point*	Presbyterian Ch.	..	..	4
NEW MEXICO.				
Pueblo: Seama	Presbyterian Ch.	60	46	33
NEBRASKA.				
Santee Agency:				
Santee Normal (training†)	Congregational Ch.	..	9	6
Total		355	272	205

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Extract from report of Agent for Osage Agency:

Revenues: The Osage Indians, through the sale of their Kansas lands secured the sum of $8,271,143.38, on which the Government pays an interest of 5 per cent., amounting annually to $413,557.16. This interest money is used in maintaining the Osage boarding school, the St. John and St. Louis boarding schools, the Osage Agency, and the balance is distributed per capita to the Indians in quarterly payments, amounting from $40 to $50 quarterly per capita.

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MISSION SCHOOLS.

The missionary work of the various Christian denominations among the adult Indians is supplemented by schools

* Attend Wolf Point Boarding School.
† Attend Santee Normal Boarding School.

conducted under their respective auspices. A majority of these schools are reservation boarding schools, where doctrinal teachings are given with literary training The Presbyterian Church maintains 4 boarding schools and no day schools; the Catholic Church, 31 boarding and 2 day schools; the Congregational Church, 3 boarding and no day schools; the Episcopal Church, 5 boarding and no day schools; the Reform Presbyterian Church, 1 boarding school; the Methodist Church South, 1 boarding school; and the Society for the Propagation of the Gospel, 1 boarding school. All of these schools seem to be doing excellent work in advancing the cause of Indian education and civilization.

These institutions are controlled by the church authorities, who furnish the amounts required for their support and maintenance, Government aid to sectarian schools having been withdrawn after Congress in the appropriation act for the fiscal year 1901 discontinued the contract-school system. The only exception made was in the appropriation for Hampton Normal and Agricultural College, in Virginia, with which school this office has a contract for the education of 120 Indian pupils.

The location, denomination controlling, and other information relative to mission schools will be found condensed in the following table:

TABLE NO. 10.—LOCATION, CAPACITY, ENROLLMENT, AND AVERAGE ATTENDANCE OF MISSION SCHOOLS DURING FISCAL YEAR ENDED JUNE 30, 1902.

BOARDING SCHOOLS.

Location.	*Supported by:*	*Capacity.*	*Enrollment.*	*Average attendance.*
ARIZONA.				
Tucson	Presbyterian Ch.	170	150	148
CALIFORNIA.				
Banning	Catholic Church	150	114	106
San Diego	" "	150	68	65
Kelseyville (St. Turibius)	Catholic Church	20	10	7
IDAHO.				
Coeur d'Alene Reservation:				
De Smet Mission	Catholic Church	150	82	79
MICHIGAN.				
Baraga	Catholic Church	140	14	13
Harbor Springs	" "	126	79	77
MINNESOTA.				
White Earth Agency:				
St. Benedict's	Catholic Church	150	93	91
Leech Lake Agency:				
Red Lake Reservation (St. Mary's)	Catholic Church	80	87	72
MONTANA.				
Blackfeet	Catholic Church	150	76	71
Crow	" "	150	62	58
Flathead	" "	350	140	126
Fort Belknap	" "	250	93	76
Fort Peck Agency,				
Wolf Point	Presbyterian Ch.	30	28	22
Tongue River	Catholic Church	65	55	52
Carried forward		2131	1151	1063

BOARDING SCHOOLS—(*Continued*).

Location.	*Supported by:*	*Capacity.*	*Enrollment.*	*Average attendance.*
Brought forward		2131	1151	1063
NEBRASKA.				
Santee Agency:				
Santee Normal (training)	Congregational Ch.	125	98	87
NEW MEXICO.				
Bernalillo	Catholic Church	125	72	68
Sante Fe, St. Catherine's	" "	150	153	140
NORTH DAKOTA.				
Fort Berthold Agency:				
Mission Home	Congregational Ch.	46	41	38
Devil's Lake Agency:				
Turtle Mtn. (St. Mary's)	Catholic Church	150	135	111
Standing Rock Agency:				
St. Elizabeth's	Episcopal Church	60	63	55
OKLAHOMA.				
Kiowa Agency:				
St. Patrick's	Catholic Church	125	67	63
Mary Gregory Memoriol	Presbyterian Ch.	60	25	21
Cache Creek	Refd. Presbyt'n Ch.	50	49	46
Methvin	Methodist Ch. South	100	66	57
Osage Agency:				
St. Louis	Catholic Church	125	56	51
St. John's	" "	150	38	34
Sac & Fox Agency:				
Sacred Heart, St. Mary's Academy	Catholic Church	54	59	44
Sacred Heart, St. Benedict's	Catholic Church	50	49	33
Carried forward		3501	2122	1911

BOARDING SCHOOLS—(*Continued*).

Location.	*Supported by:*	*Capacity.*	*Enrollment.*	*Average attendance.*
Brought forward		3501	2122	1911
OREGON.				
Umatilla Agency:				
Kate Drexel	Catholic Church	150	70	47
PENNSYLVANIA.				
Philadelphia, Lincoln Institution	Voluntary Contributions	70	50	50
SOUTH DAKOTA.				
Crow Creek	Catholic Church	75	53	50
Cheyenne River Agency:				
St. John's	Episcopal Church	60	50	50
Plum Creek	Society for Propagation of the Gospel	10	10	10
Oake	Congregational Ch.	50	41	35
Pine Ridge	Catholic Church	130	186	172
Rosebud Agency:				
St. Francis	Catholic Church	250	234	222
St. Mary's	Episcopal Church	50	45	42
Sisseton Agency:				
Goodwill Mission	Presbyterian Ch.	90	82	70
Yankton Agency:				
St. Paul's	Episcopal Church	50	53	39
WASHINGTON.				
Colville Mission	Catholic Church	150	67	62
Puyallup Reservation				
St. George's	Catholic Church	90	87	52
WISCONSIN.				
Green Bay	Catholic Church	170	175	139
La Pointe Agency:				
Bayfield	Catholic Church	50	53	38
Odanah, St. Mary's	" "	100	88	85
Carried forward		5096	3466	3074

BOARDING SCHOOLS—(*Continued*).

Location.	*Supported by:*	*Capacity*	*Enrollment.*	*Average attendance.*
Brought forward		5096	3466	3074
WYOMING.				
Shoshone Agency:				
St. Stephen's	Catholic Church	125	81	66
Shoshone Mission	Episcopal Church	20	18	13
Total		5,241	3,565	3,153

DAY SCHOOLS.

ARIZONA.				
Pima Agency:				
San Xavier	Catholic Church	125	136	101
St. John's	" "	140	130	109
CALIFORNIA.				
Kelseyville, St. Turibius*	Catholic Church	...	8	3
MONTANA.				
Fort Peck Agency:				
Wolf Point†	Presbyterian Ch.	...	4	...
NEBRASKA.				
Santee Agency:				
Santee normal training‡	Congregational Ch.	...	10	7
Total		265	288	223

* Attend St. Turibius boarding school.
† Attend Wolf Point boarding school.
‡ Attend Santee Normal boarding school.

(Page 294.)

(Report of Agent for Osage Agency to The Commissioner of Indian Affairs):

SCHOOLS.—As stated in my last annual report, the Osage parent is not only willing but anxious to have his children educated. The contrary is a rare exception. In case a child deserts school and goes home the parent can confidently be depended upon to return the child to school. Facilities for schooling are ample to take care of reservation children, as follows: Osage boarding school, capacity, 180; average attendance, 159. St. Louis contract (Catholic) school for girls, capacity, 100; average attendance, 48. St. John contract (Catholic) for boys, capacity, 80; average attendance, 34. For detailed information relative to the Osage boarding school, I invite attention to the report of Superintendent J. L. Baker.

REPORT FOR 1903 (Page 22).

MISSION SCHOOLS.

The most valuable adjunct of the Government work of civilizing the Indian is the missionary and educational work of the various bodies of Christians who maintain schools and churches in the Indian country They are doctrinal and denominational in character, and seek to impress upon young and old the religion expounded by the respective churches. While there may have been slight friction at a few places, in the main there has been hearty co-operation between the missions and the Government in the great work in which both are zealously enlisted. The God-fearing, earnest, and sincere mission teacher is an immense power for good in uplifting the Indian race, developing the spiritual nature of its people, and making sober, religious men and women.

Forty-four boarding schools and 4 day schools were conducted by religious bodies or charitable organizations. The large majority are located in the Indian country in connection with mission churches and chapels. Of this number

the Presbyterian Church reported 4 boarding schools, the Catholic Church, 30 boarding schools and 3 day schools; the Episcopal Church, 3 boarding schools; the Reformed Presbyterian Church, 1 boarding school; the Congregational Church, 3 boarding schools; the Methodist Church South, 1 boarding school; the Society for the Propagation of the Gospel, 1 boarding school; Lincoln Institute, Philadelphia, Pa., supported by voluntary contributions; the Lutheran Church, 1 day school.

Contract schools were abolished by the discontinuance of Government aid by Congress in the Indian appropriation act of 1901. However, a special appropriation was made in the Indian appropriation act for the fiscal year 1903, for the education of 120 pupils at the Hampton (Va.) Normal and Agricultural Institute.

The location, denomination controlling, and other information relative to mission schools will be found condensed in the following table:

TABLE NO. 7.—LOCATION, CAPACITY, ENROLLMENT, AND AVERAGE ATTENDANCE OF MISSION SCHOOLS DURING THE FISCAL YEAR ENDED JUNE 30, 1903.

BOARDING SCHOOLS.

Location.	*Supported by:*	*Capacity.*	*Enrollment.*	*Average attendance.*
ARIZONA.				
Tucson	Presbyterian Ch.	150	133	127
CALIFORNIA.				
Banning	Catholic Church	150	148	121
San Diego	" "	150	90	86
IDAHO.				
Coeur d'Alene Reservation, De Smet Mission	Catholic Church	150	80	67
Carried forward		600	451	401

BOARDING SCHOOLS—(*Continued*).

Location.	*Supported by:*	*Capacity.*	*Enrollment.*	*Average attendance.*
Brought forward		600	451	401
MICHIGAN.				
Baraga	Catholic Church	140	14	14
Harbor Springs	" "	200	109	104
MINNESOTA.				
White Earth Agency:				
St. Benedict's	Catholic Church	150	101	99
Leech Lake Agency:				
Red Lake Resv. (St. Mary's)	Catholic Church	80	71	62
MONTANA.				
Blackfeet	Catholic Church	150	69	62
Crow	" "	150	68	64
Flathead	" "	400	192	172
Fort Belknap	" "	250	88	86
Fort Peck Agy., Wolf Point	Presbyterian Ch.	30	25	21
Tongue River	Catholic Church	65	56	53
NEBRASKA.				
Santee Agency:				
Santee Normal Training	Congregational Ch.	125	88	77
NEW MEXICO.				
Bernalillo	Catholic Church	125	71	67
Santa Fe (St. Catherine's)	Catholic Church	150	153	145
NORTH DAKOTA.				
Fort Berthold Agency:				
Mission Home	Congregational Ch.	45	29	26
Carried forward		2660	1585	1453

BOARDING SCHOOLS—(*Continued*).

Location.	*Supported by:*	*Capacity.*	*Enrollment.*	*Average attendance.*
Brought forward		2660	1585	1453
NORTH DAKOTA (*Continued*).				
Devils Lake Agency:				
Turtle Mtn. (St. Mary's)	Catholic Church	150	96	79
Standing Rock Agency:				
St. Elizabeth's	Episcopal Church	62	66	60
OLKAHOMA.				
Kiowa Agency:				
St. Patrick's	Catholic Church	125	65	61
Mary Gregory Memorial	Presbyterian Ch.	60	26	19
Cache Creek	Refd. Presbyt'n Ch.	50	49	47
Methvin	Methodist Ch. South	80	44	37
Osage Agency:				
St. Louis	Catholic Church	125	80	64
St. John's	" "	150	41	39
Sac and Fox Agency:				
Sacred Heart, St. Mary's Academy	Catholic Church	50	54	47
Sacred Heart, St. Benedict's	Catholic Church	50	42	33
OREGON.				
Umatilla Agency:				
Kate Drexel	Catholic Church	150	76	60
PENNSYLVANIA.				
Philadelphia Lincoln Institution	Voluntary contributions	70	53	40
Carried forward		3082	2277	2039

BOARDING SCHOOLS—(*Continued*).

Location.	*Supported by:*	*Capacity.*	*Enrollment.*	*Average attendance.*
Brought forward		3782	2277	2039
SOUTH DAKOTA.				
Crow Creek	Catholic Church	75	67	60
Cheyenne River Agency:				
Plum Creek	Society for Propagation of the Gospel	10	10	10
Oahe	Congregational Ch.	75	67.	60
Pine Ridge	Catholic Church	200	187	174
Rosebud Agency:				
St. Francis	Catholic Church	250	240	223
St. Mary's	Episcopal Church	55	48	45
Sisseton Agency:				
Goodwill Mission	Presybterian Church	90	59	51
WASHINGTON.				
Colville Mission	Catholic Church	80	69	55
Puyallup Reservation:				
St. George's	Catholic Church	80	73	50
WISCONSIN.				
Green Bay	Catholic Church	170	187	159
La Pointe Agency:				
Bayfield	Catholic Church	50	59	38
Odanah, St. Mary's	" "	100	90	90
WYOMING.				
Shoshoni Agency:				
St. Stephen's	Catholic Church	90	71	63
Shoshoni Mission	Episcopal Church	20	16	14
Total		5,127	3,520	3,131

Location.	*Supported by:*	*Capacity.*	*Enrollment.*	*Average attendance.*
	DAY SCHOOLS.			
ARIZONA.				
Pima Agency:				
San Xavier's	Catholic Church	125	116	100
St. John's	" "	140	152	118
CALIFORNIA.				
Kelseyville, St. Turibius	Catholic Church	20	10	6
MONTANA.				
Fort Peck Agency:				
Wolf Point*	Presbyterian Ch.	...	2	2
Santee Agency:				
Santee Normal training †	Congregational Ch.	...	14	8
WISCONSIN.				
Green Bay Agency:				
Lutheran Mission	Lutheran Church	40	11	6
Total		325	305	240

(Page 272.)

(Report of Agent of Osage Agency to the Commissioner of Indian Affairs):

For information relative to the Kaw Boarding School and the Osage Boarding School, I respectfully call your attention to the reports on those institutions by the officers having immediate supervision.

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*Attend Wolf Point boarding school.

†Attend Santee Normal boarding school.

REPORT FOR 1904 (Page 45).

MISSION SCHOOLS.

From the earliest colonial times, from the days of Eliot and Pere Marquette, to the present, the Christian bodies of our country have manifested great interest in the Indian. Early in the field, devoted missionaries pushed on with the pioneers, and frequently in advance, in their earnest, self-sacrificing devotion to the cause of spreading the gospel among our Indian wards. With the Bible and the school-book, they dotted theWest with Churches and mission schools, from which the beginnings of civilization reached the savage Indian. Frequently taking their lives in their hands, they braved the rigors of northern winters and the burning deserts of the Southwest, in fervent zeal for the cause they represented. After the Government began seriously and intelligently to develop the work of educating and civilizing the Indians, some of the religious bodies gradually dropped out of the ranks of educators and devoted their efforts and funds more strictly to the preaching and teaching of the gospel. A number, however, have remained in the field, and are earnestly laboring among the young in schools which are usually auxiliaries of the particular church supporting them. These schools are valuable assistants in uplifting the Indian race.

Forty-six boarding schools and three day schools were conducted by religious bodies or charitable organizations. The large majority are located in the Indian country in connection with mission churches and chapels. Of this number the Presbyterian Church reported 4 boarding schools; the Catholic Church 30 boarding schools and 3 day schools; the Episcopal Church 3 boarding schools; the Reformed Presbyterian Church 1 boarding school; the Congregational Church 3 boarding schools; the Methodist Church South 1 boarding school; the Lutheran Church 3 boarding schools; Lincoln Institution, Philadelphia, Pa., supported by voluntary con-

tributions. Under special appropriation of Congress a contract was made for the education of 120 pupils in the Hampton, Va., Normal and Agricultural Institute.

The location, denomination controlling, and other information relative to mission schools will be found in the following table:

TABLE NO. 9.—LOCATION, CAPACITY, ENROLLMENT, AND AVERAGE ATTENDANCE OF MISSION SCHOOLS DURING FISCAL YEAR ENDED JUNE 30, 1904.

Location.	*Supported by:*	*Capacity*	*Enrollment*	*Average attendance*
	BOARDING SCHOOLS.			
Arizona:				
Tucson	Presbyterian Church	150	150	140
California:				
Banning	Catholic Church	150	151	123
San Diego	" "	150	78	77
Idaho:				
Coeur d'Alene Reservation, De Smet Mission	Catholic Church	150	75	70
Michigan:				
Baraga	" "	140	19	14
Harbor Springs	" "	150	130	123
Minnesota:				
White Earth Agency:				
St. Benedict's	Catholic Church	150	103	99
Leech Lake Agency:				
Red Lake Reservation (St. Mary's)	" "	80	89	71
Montana:				
Blackfeet	Catholic Church	150	91	77
Crow	" "	150	71	68
Flathead	" "	400	190	163
Carried forward		1820	1147	1025

Location.	*Supported by:*	*Capacity.*	*Enrollment.*	*Average attendance.*
Brought forward...		1820	1147	1025
Montana (*Continued*):				
Fort Belknap	" "	250	87	82
Fort Peck Agency:				
Wolf Point	Presbyterian Church	35	31	27
Tongue River.....	Catholic Church	65	57	53
Nebraska:				
Santee Agency:				
Santee Normal Training	Congregational Church	125	100	73
New Mexico:				
Bernalillo	Catholic Church	125	69	68
Sante Fe, St. Catharine's	" "	150	148	140
North Dakota:				
Fort Berthold Agency:				
Mission Home	Congregational Church	47	20	15
Devils Lake Agency:				
Turtle Mtn. (St. Mary's)	Catholic Church	150	129	108
Standing Rock Agency:				
St. Elizabeth's	Episcopal Church	62	58	47
Oklahoma:				
Kiowa Agency:				
St. Patrick's.....	Catholic Church	125	58	54
Mary Gregory	Presbyterian Church	60	27	25
Cache Creek	Rfd. Presbyt'n Church	50	44	43
Methvin	Methodist Church South	60	80	68
Osage Agency:				
St. Louis.....	Catholic Church	125	72	69
St. John's	" "	150	44	41
Carried forward		3399	2171	1938

Location.	*Supported by:*	*Capacity.*	*Enrollment.*	*Average attendance*
Brought forward...		3399	2171	1938
Oklahoma (*Continued*):				
Sac & Fox Agency:				
Sacred Heart (St. Mary's Academy)	" "	65	60	50
Sacred Heart (St. Benedict's).....	" "	50	42	35
Oregon:				
Umatilla Reservation:				
Kate Drexel.....	Catholic Church	150	73	51
Pennsylvania:				
Philadelphia: Lincoln Institution.....	Voluntary contributions	100	45	40
South Dakota:				
Crow Creek.....	Catholic Church	75	69	61
Cheyenne River Agency:				
Oahe.....	Congregational Church	50	12	10
Pine Ridge.....	Catholic Church	200	193	184
Rosebud Agency:				
St. Francis.....	" "	250	261	234
St. Mary's.....	Episcopal Church	55	48	45
Sisseton Agency:				
Goodwill Mission..	Presbyterian Church	100	84	73
Washington:				
Colville Mission.....	Catholic Church	80	65	51
Puyallup Reservation:				
St. George's.....	" "	80	78	64
Wisconsin:				
Green Bay Reservation:				
St. Joseph's.....	Catholic Church	170	181	162
Lutheran Mission..	Lutheran Church	20	23	7
Zoar Mission.....	" "	40	14	8
Bethany Mission...	Evangelical Luth. Ch.	60	27	22
Carried forward....		4944	3446	3035

Location.	*Supported by:*	*Capacity.*	*Enrollment.*	*Average attendance.*
Brought forward...		4944	3446	3035
Wisconsin (*Continued*):				
La Pointe Agency:				
Bayfield	Catholic Church	140	62	52
Odanah (St. Mary's)	" "	100	83	77
Wyoming:				
Shoshoni Agency:				
St. Stephen's	Catholic Church	90	110	100
Shoshoni Mission...	Episcopal Church	20	15	13
Total		5294	3716	3277

DAY SCHOOLS.

Pima Reservation:				
San Xavier's	Catholic Church	125	110	100
St. John's	" "	140	148	135
California:				
Kelseyville, St. Turibius.....	Catholic Church	15	10	10
Montana:				
Fort Peck Agency:				
Wolf Point*	Presbyterian Church	10	2	2
Santee Agency, Santee Normal Training†	Congregational Church	..	11	9
Wisconsin:				
Green Bay, Lutheran Mission	Lutheran Church	20	15	6
Total		310	296	262

* Attend Wolf Point boarding school.
† Attend Santee Normal boarding school.

(Page 300.)

Report of Agent for Osage Agency to the Commissioner of Indian Affairs:

SCHOOLS.

Two schools have been maintained under the supervision of the agent throughout the year. * * * * Besides the Indian children who attended these schools a large majority of those of school age were enrolled in the nonreservation schools, the two Catholic boarding schools on the reserve, etc.

(Page 371.)

Report of Superintendent of St. Joseph's Industrial school to the Superintendent in charge of Green Bay Agency, Wisconsin:

SUPPORT.

As already during the four preceding years, thus, also, for the first part of the fiscal year until December 31, 1903, we depended on charitable contributions, especially on the Catholic Indian Bureau, of Washington, D. C.; but after that we were aided by the honorable Commissioner of Indian Affairs, W. A. Jones, to whom we are under great obligations for the means we have received.

MAR 4 190
JAMES H. McKEN

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1907.

No. 569.

REUBEN QUICK BEAR, RALPH EAGLE FEATHER, and CHARLES TACKETT, on behalf of themselves and all other members of the Sioux Tribe of Indians of the Rosebud Agency, S. D., Appellants,

vs.

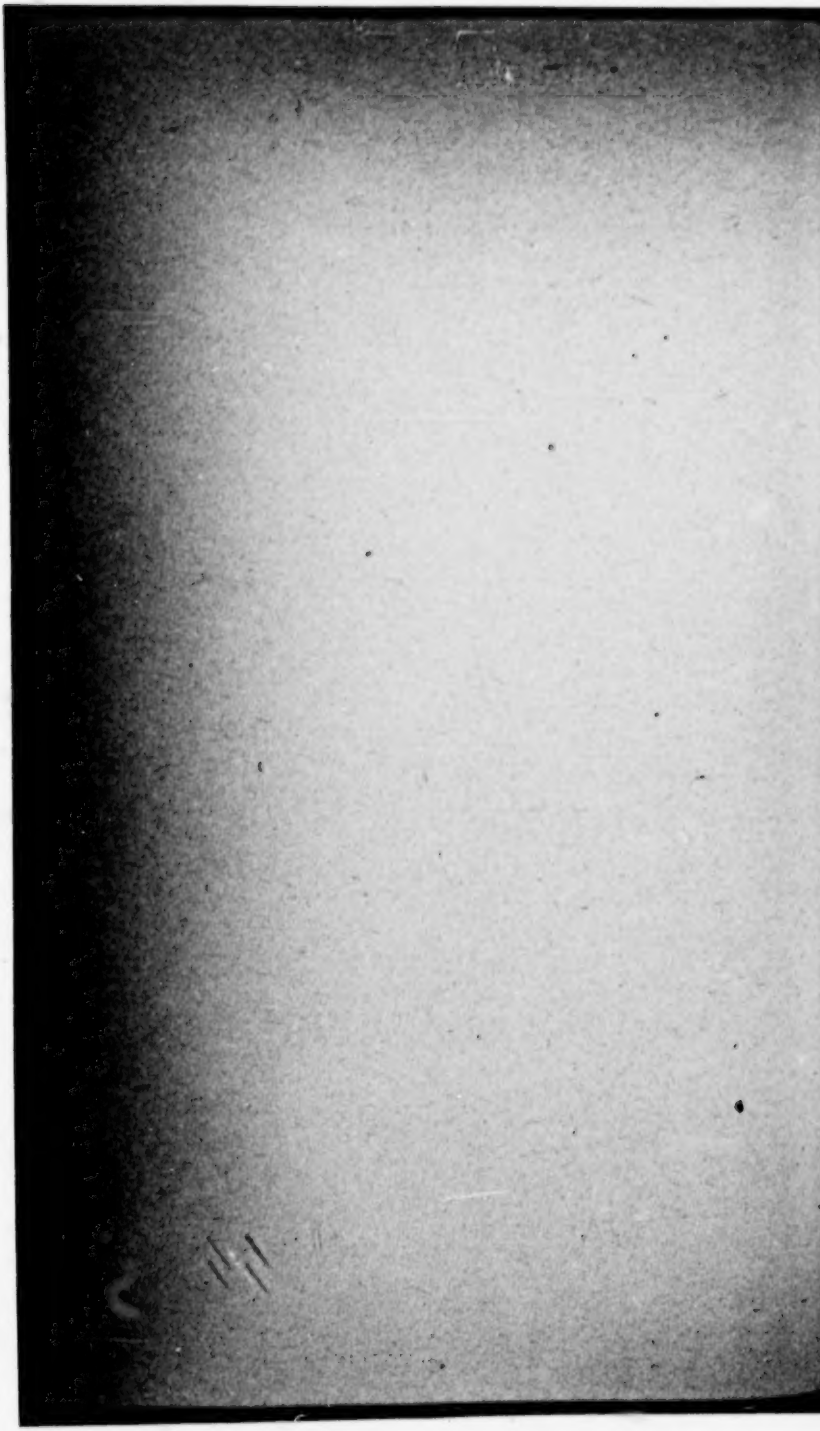
FRANCIS E. LEUPP, Commissioner of Indian Affairs; JAMES RUDOLPH GARFIELD, Secretary of the Interior; GEORGE BRUCE CORTELYOU, Secretary of the Treasury; CHARLES H. TREAT, Treasurer of the United States; and ROBERT J. TRACEWELL, Comptroller of the Treasury.

APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

APPELLANTS' BRIEF IN REPLY.

CHARLES C. BINNEY,
Solicitor for Appellants.

N. DUBOIS MILLER,
HAMPTON L. CARSON,
Of Counsel.



IN THE

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October Term, 1907.

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REUBEN QUICK BEAR, RALPH EAGLE FEATHER, and CHARLES TACKETT, on behalf of themselves and all other members of the Sioux Tribe of Indians of the Rosebud Agency, S. D., Appellants,

vs.

FRANCIS E. LEUPP, Commissioner of Indian Affairs; JAMES RUDOLPH GARFIELD, Secretary of the Interior; GEORGE BRUCE CORTELYOU, Secretary of the Treasury; CHARLES H. TREAT, Treasurer of the United States; and ROBERT J. TRACEWELL, Comptroller of the Treasury.

APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

APPELLANTS' BRIEF IN REPLY.

What the Term "Public Moneys" Includes.

The appellees' brief, after reviewing the legislation in regard to contracts with sectarian schools, says (p. 8):

> This statement of policy ["the settled policy of the Government"], in so far as it can now have any legal

> effect, was intended only to apply to appropriations of public moneys for education in sectarian schools. . . . The cessation of the appropriation from the public moneys for education in the sectarian schools was treated as the accomplishment of the purpose contained in the statement of the policy found in the Acts of 1896 and 1897.
>
> . . . These appropriations ceased with the Indian Appropriation Act of 1899, have never been made since, nor is anyone asking that they should be made, or that any public moneys of the United States raised by taxation should be employed for such purposes.

Again, on page 9, the appellees' brief says, in regard to treaty funds in general:

> . . . although formally appropriated the moneys are not regarded as the moneys of the United States, but moneys belonging to the Indians, due to them under treaties in consideration of their cession of lands and other rights.

The appellees' contention is that the term "appropriation," as used in the legislation regarding contracts with sectarian schools, means an appropriation of "public moneys of the United States raised by taxation"; and further, that neither the Sioux Treaty Fund, nor the Sioux Trust Fund, nor any other similar Indian funds, are "public moneys of the United States raised by taxation." (See Appellees' Brief, p. 24.) The first point may be practically conceded, because all the money in the United States Treasury, subject to appropriation by Congress, has been raised by taxation, except the proceeds of the sale of Government bonds (which must ultimately be redeemed from money raised by taxation, and which may therefore be treated as representing such money), and the proceeds of sales of public lands, which latter funds are relatively so small in amount that they may be disregarded.

Even the Sioux trust fund, deposited in the Treasury to the credit of the Sioux Tribe, undoubtedly came into the Treasury originally in the form of money raised by taxation. The second point of the contention, however, cannot, it is submitted, be sustained.

The language used by Congress in the very inception of its course in abolishing sectarian contract schools, shows that Congress did not intend to limit itself to discontinuing those particular contract schools which were supported from the general appropriation for "Support of Schools." The Indian Appropriation Act of August 15, 1894 (28 Stats. 311) contains this provision:

> That the expenditure of money appropriated for school purposes *under this act* shall be at all times under the supervision and direction of the Commissioner of Indian Affairs, and in all respects in conformity with such conditions, rules and regulations as to the conduct of and methods of instruction and expenditure of money, as may from time to time be prescribed by him, subject to the approval of the Secretary of the Interior: *Provided*, that the Secretary of the Interior is hereby directed to inquire into and investigate the propriety of discontinuing contract schools, and whether, in his judgment the same can be done without detriment to the education of Indian children, and that he submit to Congress at the next session, the result of such investigation, including an estimate of the annual cost, if any, of substituting Government schools for contract schools, together with such recommendations as he may deem proper.

The words, "money appropriated for schools *under this act*," cannot be restricted to the appropriation for "Support of Schools," but are obviously intended to include all appropriations of money for school purposes, contained in any portion of the act. They therefore necessarily include all the Indian funds appropriated for in that act, in so far as the same

were available for school purposes, including the Sioux treaty fund, which is found on page 299, a part of which is expressly appropriated for school purposes, while a portion of the balance also has always been regarded as available for the same purpose. In other words, this provision places the entire school fund appropriated for by that act under the supervision and direction of the Commissioner of Indian Affairs, subject to the approval of the Secretary of the Interior, and the investigation which the Secretary was directed to make certainly related to all contract schools which were supported from that fund. The scope of his investigation cannot have been intended to be limited by any narrower limits than those of the application of this entire fund, in so far as it was applied to the support of any sectarian contract schools whatever. As a matter of fact the Secretary reported (Ho. Ex. Doc. No. 107, 53 Cong., 3d. Sess.; Rec. 15) in regard to contract schools in general, necessarily including the few which were supported from Indian trust funds, not appropriated for in the Indian Appropriation Act, and presumably Congress had intended that he should so report in regard to the whole system; but at all events the broad language used in the very first sentence of the first provision looking towards a discontinuance of contract schools, makes it certain that there was no intention to restrict the investigation to those particular contract schools which were supported from one of the appropriations made in the act, to the exclusion of those supported from other appropriations made in the same act.

The subsequent provisions in the Acts of 1895 to 1899 inclusive, being all directed towards the carrying out of the system proposed in the Secretary of the Interior's report, must be understood as having the same comprehensive scope as that of the report itself, *i. e.*, as relating to the entire contract school system, and indeed the broad language used in these statutes cannot properly receive any more limited interpretation.

As regards Indian treaty funds, the appropriation which

annually creates them is certainly just as much an appropriation of "public moneys of the United States raised by taxation," as is any other appropriation. The money is undoubtedly raised by taxation, and until the moment when it is paid over by the proper disbursing agent it is just as certainly "public moneys of the United States," as is any other money disbursed by the Government. Should the disbursing officer embezzle it, he would not be charged with having embezzled the money of individual Indians, nor even the money of a tribe, but he would certainly be indicted for embezzlement of public money, under section 5488 of the Revised Statutes.

Until the actual moment of disbursement, how does the money appropriated to fulfill Indian treaties lose its character as "public moneys of the United States," any more than money appropriated for a contract for a battleship? The legal obligation to pay over the money is of as high a character in both cases; in each case the appropriation simply designates the purpose to which the money is to be applied; and in each case the money is held in the Treasury, or in the hands of the disbursing officers, in the interval between appropriation and payment, for the ultimate benefit of the parties who are to receive it. If there be no difference in these particulars between an appropriation to fulfill Indian treaties and an appropriation for a contract for a battleship, surely there can be no difference in those particulars between the former and an appropriation for "Support of Schools." The one must be "public moneys of the United States" precisely to the same extent as the other.

The same is really true of Indian trust funds, though the interest in the latter becomes available under a permanent annual appropriation, instead of having to be specifically appropriated each year. A disbursing officer who embezzled the interest on an Indian trust fund would be indicted for embezzlement of public money, under section 5488 of the Revised Statutes, just as if he had embezzled money belonging to an Indian treaty fund or money appropriated for

"Support of Schools." Moreover the Revised Statutes clearly regard all "funds held in trust by the United States" as public moneys, section 3659, in regard to such trust funds, being placed under Title XL, "The Public Moneys." The reference in this section to treaties obviously includes Indian treaties, and in point of fact Indian treaty funds have always constituted the great bulk of the funds held in trust by the United States. If, therefore, the statutes in regard to contracts with sectarian schools are concerned merely with the use of "public moneys of the United States" for the support of such schools, as the appellees' brief says, even then they necessarily relate to the use of Indian treaty funds, and of Indian trust funds as well.

The Position of the Provisions as to Contracts with Sectarian Schools.

On page 24 the appellees' brief points out that in the Indian Appropriation Acts the Sioux Treaty Fund, and other similar treaty funds, are appropriated for under one heading, while the general appropriation for "Support of Schools" is made under another heading, the contention being that "these things are kept separate, not by accident or inadvertence, but because they are essentially different in their nature," with the inference that the provisions in regard to contracts with sectarian schools, being found under the heading "Support of Schools," cannot relate to anything except what is found under that heading. It is submitted that the appropriations are kept separate simply as a matter of orderly arrangement, not on account of any fundamental distinction in character. There is a certain system followed in the framing of these appropriation bills. The appropriations which relate to particular tribes come first, and are immediately followed by the appropriation for "Support of Schools," which relates to all the tribes in general. By this system the appropriation for the Sioux treaty fund is found a very few pages, sometimes more and sometimes fewer, from the appro-

priation for "Support of Schools," but this separation might be much greater, or might not exist at all, without affecting the character of the former appropriation. It is significant that all these appropriations are always made in the same section of the Appropriation Act, section 1, thus indicating that Congress regards them all as appropriations of the same general character and purpose. The provisions in regard to contracts with sectarian schools were naturally placed in that portion of the section which related to the appropriation for "Support of Schools," because the contract schools were mainly supported from that appropriation, but the comprehensive language of these provisions shows that they were intended to apply to contract schools in general, without regard to the particular fund used for them. The only classes of schools which Congress wished to except from the operation of these provisions (viz., public schools and schools specifically provided for) were specially excepted by a proviso in each one of the statutes, which special exception shows conclusively, if any further proof were needed, that no other schools were intended to be excepted.

The President's Letter and the Attorney General's Statement.

The appellees' brief (pp. 8, 9) undertakes to define Indian "Trust Funds" and Indian "Treaty Funds," and then goes on to cite "examples of these funds"; but, as a matter of fact, all the examples cited, taken from the Attorney General's statement (Rec. 24), are instances of "Trust Funds," the principal of which is on deposit in the United States Treasury, the interest only being available from year to year. This failure to cite any examples of "Treaty Funds" indicates a certain confusion, in the mind of the appellees' counsel, as to the precise difference between the two kinds of funds. This confusion of the two funds becomes even more evident later on in the brief.

Thus on page 13 the appellees' brief states that "at the re-

quest of the Osage Indians their treaty funds have been annually and uninterruptedly appropriated to the Catholic Mission schools under annual contract," nothing being said as to trust funds. As a matter of fact, in the years covered by the information contained in the record (Rec. 34–45), the trust fund was very much more largely used for this purpose, and in the fiscal years 1895, 1896 and 1898 the latter was used exclusively.

The appellees' brief (p. 15) cites in full the President's letter of February 3, 1905, to the Secretary of the Interior, directing the making of contracts with sectarian schools. This is interesting historically, but can hardly be regarded as an authority which could in any way affect the decision of a court. It is, however, important to notice that the President's letter does not authorize the making of such a contract as was made in the present case. The letter says (brief, p. 16):

> . . . The request was made . . . that where there were Indian moneys *held in trust* for the Indians by the Secretary of the Interior, the interest on these Indian moneys *being distributed among the individual Indians* or in such other ways as the Secretary of the Interior might direct, and where certain of the Indians petitioned that *the moneys so distributed to them* should be used for the support of the particular denominational school which they desired their children to attend, this petition should be granted. . . .
>
> This new request was submitted to the Department of Justice, and the Department decided, as set forth in the accompanying report, that the prohibition of the law as to the use of public moneys for sectarian schools did not extend to *moneys belonging to the Indians themselves*, and not to the public. . . . There was, in my judgment, no question that . . . they were entitled as a matter of moral right to have *the moneys coming*

to them used for the education of their children at the schools of their choice.

It is perfectly clear from the language used in this letter, that the President was referring to Indian trust funds exclusively, and not to treaty funds at all; and the report of the Attorney General, referred to in the letter, and printed on pages 23–26 of the record (see Appellees' Brief, p. 18), also related exclusively to Indian trust funds, and had no reference whatever to Indian treaty funds. Moreover, the President's letter only authorizes the making of contracts payable from those trust funds, or portions of trust funds, the interest on which would be "distributed among the individual Indians." (Appellees' Brief, p. 16, line 23.) He was considering the petition of certain Indians "that the moneys so distributed to them" should be used for sectarian education, and it is such money as this that he refers to when he says that the Indians' wishes should be respected "when they request that *their own money*" be applied to this purpose.

The President's idea evidently was that as there were certain funds, or portions of funds, the interest on which might be distributed among the Indians in cash *per capita*, the proportionate shares of such Indians as wished to have their children educated in sectarian schools might fairly be used for such a purpose, instead of being distributed *per capita*. Now the Commissioner of Indian Affairs has stated, in regard to the present contracts and those made about the same time, that the payments were to be made from the "same funds out of which the government schools were supported," not from "the fund out of which *per capita* payments to the Indians were made," but from "those funds which are not susceptible to equal division." (Ans. No. 5, Rec. 33.) This shows conclusively that whatever importance be attached to the President's letter, it utterly fails to authorize the present contract.

As to the opinion or report of the Attorney General, referred to in the letter, it must be further said that the advice given

was largely based upon the statements of certain members of the Senate and House in debate (see rec. 25, lines 41-47), but whatever light the Attorney General may have obtained from these sources, it is well settled that a Court in deciding upon the interpretation of a statute must regard statements made in debate as wholly irrelevant. (*United States* vs. *Freight Assn.*, 166 U. S., 316.) Then, too, the reference (Rec. 26, line 4) to "the previous laws giving the Secretary of the Interior discretion to use certain moneys of the Indians held in trust in any way that he might see fit, including assistance to sectarian schools," does not really warrant the Attorney General's conclusion that the discretion to use the money for this latter purpose remained. Whatever discretion the Secretary may have had in the matter was subject to the control of Congress, and if that body has (as is submitted) deprived him of authority to contract with sectarian schools, such deprivation must necessarily affect whatever authority he may have previously had by treaty or otherwise, and must therefore repeal *pro tanto* previous treaties and statutes giving such authority. As a matter of fact, the authority given by these previous treaties and statutes seems to have always been given in general terms, without any mention of contracts with sectarian schools (such as might be inferred from the Attorney General's words, "including assistance to sectarian schools"), and certainly such is the fact in the particular treaty and statutes involved in the present case.

In this connection it is also significant that while the Attorney General's statement advises the President that the interest on the trust funds might be used for education in sectarian schools, it does not advise him that any contract could be made for such education. On the contrary it says, "These funds can be used for sectarian schools, *but it would be well to do that otherwise than under contracts.*" (Rec. 24, 8th par.) Evidently the then Attorney General was at least doubtful as to the legality of any contracts with sectarian schools.

Congress Undertook to Regulate Contracts, Not Appropriations.

The discussion of "Appropriations of Public Moneys for Education among the Indians" on pages 25-30 of the appellees' brief, is based upon a misunderstanding of the statutes and the Secretary's report of 1894, as is shown by the misquotations from them. The appellees' special counsel has so completely convinced himself that the restrictions imposed upon the power to contract with sectarian schools extended only to contracts payable out of the appropriation for "Support of Schools," that he has forgotten to quote the actual language of those restrictions, and has given instead language which would make them refer to the appropriations, and not to the contracts.

Thus on page 25, last paragraph, counsel states that the Secretary "suggested* a gradual reduction in the public appropriations." Not at all. What he suggested was a gradual reduction in the sectarian contract schools. He said:

> We need the schools now, or else we need a large appropriation to build schools to take their place.
>
> It would scarcely be just to abolish them entirely—to abandon instantly a policy so long recognized. My own suggestion is that they should be decreased at the rate of not less than 20% a year. Thus, in a few years more, they would cease to exist, and during this time the Bureau would be gradually prepared to do without them, while they might gather strength to continue without Government aid. This is the policy which is now controlling the Department, and unless it is changed by legislation, it will be continued. The decrease in the appropriation for the present fiscal year is 20%.

* This suggestion is not contained in the Secretary's annual report for 1894, as stated in the answer in this case (Rec. 15), but in a special report, viz. House Ex. Doc. No. 107, 53d Cong., 3d Sess. The extract from this report, given in the answer, is, however, correct.

Here the words "them" and "they" obviously refer always to the schools, and while the word appropriation is once used, it does not refer to the appropriation by Congress, which had not been decreased at all, but to the Secretary's own appropriation, or use, of the money placed at his disposal.

The statement as to what the Secretary's recommendations meant (Appellees' Brief, p. 26) is entirely colored by this same erroneous idea that the Secretary was referring to appropriations rather than to contract schools. There may not be "the remotest allusion to restricting Indians in the use of their own moneys," but the entire report concerned the restriction of sectarian contract schools, which schools were of precisely the same character, and contracted with in precisely the same way, whether the money was paid out of one appropriation or another. The next paragraph on the same page of the brief says:

> In accordance with this recommendation, Congress for the first time introduced in the appropriation Act of 1895, Ch. 188, a limitation on the use of public moneys in Sectarian Schools.

It is true that the practical effect of the action of Congress was to limit the use of "public money," by which counsel means money appropriated for "Support of Schools," but what Congress actually did was to limit the Secretary's power to contract with sectarian schools, without regard to the particular money affected thereby.

In contending that the restriction contained in the Appropriation Act of 1895, related only to the appropriation for "Support of Schools," appellees' special counsel makes an extraordinary misstatement. He says (Brief, p. 27):

> The sum appropriated was $1,164,350. Of this sum 80 per cent. was authorized to be expended with contract schools, as these were the schools which up to that time had educated the Indians.

The actual provision, which is correctly quoted a few lines above on the same page, restricts the making of contracts, limiting it "to an extent not exceeding 80 per cent. of the amount so used in the fiscal year 1895," which was a very much smaller sum than the $1,164,350 appropriated. The amount so used for contract schools in 1895, as stated in the report for that year, was $285,715* for schools not specially appropriated for, and $177,790 for schools especially appropriated for, making $463,505 altogether, 20 per cent. of which is $92,701, which constituted the reduction in the contracts for 1896. (Appx. 55, last paragraph.)

Again on page 28 the brief says:

> Congress was dealing only with the appropriation of public moneys for sectarian education. These appropriations were being reduced at the rate of 20% a year, so that in five years they would entirely cease.

This statement is true in a sense, in that it indicates a part of the effect of the legislation, but it is not an accurate statement of what Congress actually did. Congress did not reduce any appropriation, but it did make five successive reductions in the extent of the Secretary's power to make contracts with sectarian schools. The words "this being the final appropriation for sectarian schools" simply mean "this being the final appropriation of which any part shall be available for sectarian schools," for as a matter of fact only a very small part of the total appropriation was so available.

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* Through a printer's error, the total amount paid for the contracts for 1895, other than those for schools specially appropriated for, is incorrectly stated in the appendix (p. 60). The proper figure is $285,715, the amount estimated in the report for 1894. (Appx. 54.) To this should be added $177,790 paid on contracts for schools specially appropriated for, making $463,505 in all. In the reports for 1896 (Appx. pp. 62–65) and subsequent years, the schools specially appropriated for are included in the same table as the others.

The Appellees' Authorities.

The authorities cited on page 30 of the appellees' brief (*Bank for Savings* vs. *Collector*, 3 Wall. 495; *Henderson's Tobacco*, 11 Wall. 652; *Savings Bank* vs. *United States*, 19 Wall. 227) have no real bearing upon the present case. In *Bank for Savings* vs. *Collector* the proviso was that a certain section should not apply to certain associations or to savings banks. In *Henderson's Tobacco* the proviso was that proceedings to enforce a forfeiture under the act should be commenced within twenty days after seizure of the property. In *Savings Bank* vs. *United States* the statute imposed a tax upon dividends and undistributed surplus, and, the proviso having declared that the interest paid by savings banks should not be considered as dividends, it was held that this proviso did not affect the liability of a savings bank for taxes on undistributed surplus. There is not the slightest analogy between any of these decisions and the present case, where the provisos are all provisos in form only. They constitute a series of provisions of positive legislation, couched in terms not limited in their operation to the subject matter of any particular section nor to any particular appropriation, and the meaning and effect would have been precisely the same had the words "provided that" been omitted in each instance.

The case of *Roberts* vs. *Bradfield* (12 App. Cas. D. C., 475, Appellees' Brief, p. 34) has no bearing upon the present issue. That case merely decided that a declaration of the Government's policy analogous to those in the acts of 1896 and 1897, but limited to take effect only after a certain date, could not affect a contract which would be completely executed before that date. The decision in the same case upon final appeal (*Bradford* vs. *Roberts*, 175 U. S., 271) is equally outside of the present discussion. That case held that under the charter of the Providence Hospital it was not a sectarian institution, whether the individuals who composed the corporation

happened to belong to the same religious body or not, but this has really nothing to do with the case here, because the answer very frankly concedes that the school in question is a sectarian school within the meaning of the acts of Congress.

The Stephens bill and the McCumber amendment can hardly be said to constitute "aids to interpretation" of the statutory provisions in regard to contracts with sectarian schools, though cited for this purpose in the appellees' brief (p. 37). The former indicates that Mr. Stephens supposed that the declaration of "the settled policy of the Government" might not apply to Indian trust funds, and that it should be made to do so explicitly. This indication of his opinion cannot stand on any higher ground than a statement in debate, which a court cannot regard, and at all events it was limited to trust funds. The fact that the bill was tabled in Committee, so that it never was submitted to Congress as a whole for action, is conclusive against its being taken as an indication of the understanding of that body. The same may be said of the McCumber amendment, which, though passed by the Senate, never came before the House for action, being struck out by the conference committee. As a matter of fact this amendment, as adopted by the Senate, related mainly to a proposed method by which an individual Indian might direct that any money which might be allotted to him from a trust fund, might be used for education in a sectarian school, —a totally different matter from the making of a contract, by the Secretary of the Interior, for such education.

The provisions in the Indian Appropriation Act for the fiscal year 1907 (Act of June 21, 1906, ch. 3504, 34 Stats. 326) and in the Osage Reservation Act of June 28, 1906, sec. 4 (34 Stats. 542), cited in the appellees' brief (p. 39) have absolutely no bearing upon the intention of Congress in adopting the provisions of the Acts of 1895 to 1899 inclusive, in regard to contracts with sectarian schools. The Act of June 21, 1906, permitted mission boarding schools to receive the rations of food and clothing issued to the children at such

schools, while the Act of June 28, 1906, as an incident in the disposition of the property of the Osages, set aside a portion of their income (which would otherwise have been distributed among the individual members of the tribe) for the support of certain sectarian schools for ten years. These Acts merely sanctioned certain arrangements which the Indians saw fit to make with sectarian schools, in regard to property actually distributed or distributable among the Indians, but neither Act involved any contract between the Secretary of the Interior and any sectarian school.

CHARLES C. BINNEY,
Solicitor for Appellants.

N. DUBOIS MILLER,
HAMPTON L. CARSON,
Of Counsel